

(27,903)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 546.

MAX W. STOEHR, SUING IN HIS OWN BEHALF AS A
STOCKHOLDER IN STOEHR & SONS, INC., AND IN
BEHALF OF ALL OTHERS SIMILARLY SITUATED,
APPELLANTS,

vs.

JAMES N. WALLACE ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Bill of Complaint.

Valentine Taylor, Solicitor for Complainant, No. 52 Wall Street, Borough of Manhattan, New York City.
Louis Marshall, Louis J. Vorhaus, of Counsel.

U. S. District Court, S. D. of N. Y. Filed Dec. 2, 1918.

3 In the District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kiefer, Defendants.

Bill of Complaint.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The complainant Max W. Stoehr, suing in his own behalf as a stockholder of Stoehr & Sons, Inc., and in behalf of all others similarly situated who may come in and join in this proceeding and share in the expenses thereof, brings this his Bill of Complaint against the above-named defendants and respectfully shows to the Court:

4

First. Max W. Stoehr is and ever since 1910 has been a citizen of the United States and of the State of New York and an actual resident in the City and County of New York, in said State. The defendant A. Mitchell Palmer is a citizen and resident of the City of Stroudsburg, State of Pennsylvania. He now is, and at all of the times hereinafter mentioned was, the Alien Property Custodian, having been duly appointed to such office pursuant to the Act of Congress approved October 6, 1917, and known as the "Trading with the Enemy Act." The defendant Stoehr & Sons, Inc., is and ever since February 17, 1917, has been a corporation duly organized by and under the laws of the State of New York. The defendant Botany Worsted Mills is and ever since May 11, 1899, has been a corporation duly organized by and under the laws of the State of New Jersey. The defendants James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, Richard Stockton and H. C. MacEldowney are now acting as the directors of the Botany Worsted Mills, and the defendants James N. Wallace, Francis P. Garvan, Andrew B. Duvall and Paul Kieffer are now acting as the directors of Stoehr & Sons, Inc.

Second. The jurisdiction of this court is invoked under Sections 24 and 57 of the Federal Judicial Code, under the Act of Congress known as "Trading with the Enemy Act," as amended, and also under the provisions of the Constitution of the United States, and particularly the Fifth Amendment thereto, the rights of complainant and of the defendant Stoehr & Sons, Inc., and its stockholders
5 having been wrongfully, unlawfully and without due process of law invaded by the defendants herein, under color of the aforesaid "Trading with the Enemy Act," and in violation of the clause of the Fifth Amendment to the Constitution of the United States, which guarantees that no person shall be deprived of life, liberty or property without due process of law.

Third. Since February 17, 1917, complainant has continuously been, and now is, the lawful owner and holder of record of forty-four (44) shares of the capital stock of the defendant Stoehr & Sons, Inc. Neither he nor the defendant Stoehr & Sons, Inc., is or at any time has been an enemy or the ally of any enemy of the United States within the meaning of such terms as used and defined in the "Trading with the Enemy Act," or in any way whatsoever, but they have been at all times faithful to their allegiance and loyal to the United States; nor has the complainant at any time since April 6, 1917, done business with any enemy or the ally of any enemy of the United States or been outside of the territory of the United States, nor has the defendant Stoehr & Sons, Inc., since that time done any business with any enemy or the ally of any enemy of the United States.

Fourth. The capital stock of the defendant Stoehr & Sons, Inc., incorporated as hereinbefore set forth, is Two Hundred and Fifty Thousand (\$250,000) Dollars, consisting of Two Thousand Five

Hundred (2,500) shares of the par value of One Hundred (\$100) Dollars each.

Fifth. The capital stock of the defendant Botany Worsted Mills is Three Million Six Hundred Thousand Dollars (\$3,600,000) and consists of Thirty-six Thousand (36,000) shares of the par value of One Hundred (\$100) Dollars each. Ever since its incorporation it has been, and now is, engaged in the business of manufacturing woolen and worsted cloths and yarns.

Sixth. On or about February 19, 1917, the defendant Stoechr & Sons, Inc., became, ever since has been and now is the true and lawful owner of Five Thousand Six Hundred and Ninety (5,690) shares of the capital stock of the defendant Botany Worsted Mills.

Seventh. In or about the latter part of the year 1914 Kammgarnspinnerei Stoechr & Co., Actiengesellschaft of Plagwitz, Leipzig, Germany, the owner in fact and of record of Fourteen Thousand Nine Hundred (14,900) shares of the capital stock of the defendant Botany Worsted Mills, caused to be transferred on the books of said Company Fourteen Thousand Nine Hundred (14,900) shares of the capital stock of the defendant Botany Worsted Mills in trust for said beneficial owner of the same as to Ten Thousand (10,000) shares thereof to Hans E. Stoechr and as to Four Thousand Nine Hundred (4,900) shares thereof to the complainant herein. Thereupon, on February 20, 1917, an agreement was duly made and entered into between the aforesaid beneficial owner of said Fourteen Thousand Nine Hundred (14,900) shares aforesaid, Kammgarnspinnerei Stoechr & Co., Actiengesellschaft, and the defendant Stoechr & Sons, Inc., a copy of which agreement is hereto attached, marked Complainant's Exhibit I, and made a part hereof. Pursuant to the terms of such agreement the complainant and Hans E. Stoechr as trustees duly transferred to the defendant Stoechr & Sons, Inc., said 14,900 shares of the capital stock of the Botany Worsted Mills. By the terms of the contract the beneficial owner agreed to sell and transfer to defendant Stoechr & Sons, Inc., and the latter agreed to purchase from the Trustees the aforesaid Fourteen Thousand Nine Hundred (14,900) shares of the capital stock of the defendant Botany Worsted Mills, and to pay therefor their book value; and in part performance of such contract the defendant Stoechr & Sons, Inc., duly paid to the vendor of said shares the sum of Five Thousand (\$5,000) dollars. Thereupon the defendant Stoechr & Sons, Inc., on February 20, 1917, became and has ever since been and now is the lawful owner of and vested with the title to said Fourteen Thousand Nine Hundred (14,900) shares of the capital stock of the defendant, Botany Worsted Mills.

Eighth. By reason of the premises complainant, as a stockholder of the defendant, Stoechr & Sons, Inc., has an equitable interest to the extent of the shares of stock held by him in the said Five Thousand Nine Hundred and Sixty (5,960) shares of stock owned by said Stoechr & Sons, Inc., in the said defendant, Botany Worsted Mills,

and also in the aforesaid Fourteen Thousand Nine Hundred (14,900) shares of the capital stock of said Botany Worsted Mills, hereinbefore referred to.

Ninth. On April 6, 1917, the United States of America declared war against the Empire of Germany, and on December 7, 1917, against the Empire of Austro-Hungary, and thereafter continued to be actually engaged in such war until November 11, 1918, when hostilities were ended by the terms of an armistice duly adopted and on that day officially promulgated by the President of the United States.

Tenth. On and about the 20th day of March, 1918, the defendant, A. Mitchell Palmer, assuming to act as Alien Property Custodian, under the act of Congress of October 6th, 1917, known as
8 "Trading with the Enemy Act," wrongfully, unlawfully, forcibly and without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States, took possession of certain mills, personal property and appurtenances owned by the defendants Stoehr & Sons, Inc., and Botany Worsted Mills, at Passaic, in the State of New Jersey, and of all the other assets and personal property of the said defendants within the United States, and of the books of account and other books, papers and muniments of title of said corporations, and he further claims as such Alien Property Custodian to have acquired the right of possession of and to have seized the shares of stock of the defendant, Botany Worsted Mills, of which the defendant, Stoehr & Sons, Inc., is the owner.

Eleventh. Pursuant to such seizure and acting under color of the "Trading with the Enemy Act," the defendant, A. Mitchell Palmer, as the Alien Property Custodian, caused the duly elected and then acting Directors of the defendants, Botany Worsted Mills and Stoehr & Sons, Inc., to be removed, and to be in their place and stead put into office as the directors of Botany Worsted Mills the defendants, James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney and Richard Stockton and as the directors of Stoehr & Sons, Inc., the defendants Francis P. Garvan, Andrew B. Duvall, the said James N. Wallace and Paul Kieffer, all of whom are now acting as directors of the respective corporations for which they have been designated to act as such.

Twelfth. On information and belief, complainant avers that the defendant, A. Mitchell Palmer, as Alien Property Custodian,
9 has directed the defendants who now are the acting Directors of said Botany Worsted Mills to issue to him, as Alien Property Custodian, certificates of stock for the aforesaid Twenty Thousand Five Hundred and Ninety (20,590) shares of the capital stock of the Botany Worsted Mills owned by defendant, Stoehr & Sons, Inc., and said Defendant-Directors of the Botany Worsted Mills are about to issue to the Alien Property Custodian certificates for

said shares of stock unless restrained by an injunction from this Honorable Court.

Thirteenth. The defendant, A. Mitchell Palmer, as Alien Property Custodian, through the Directors put in and designated by him of the defendants Botany Worsted Mills and Stoeck & Sons, Inc., has assumed possession and control of the properties and property rights of the said corporations which he claims to have seized, and asserting such possession and control, the defendant, A. Mitchell Palmer, and the Defendant-Directors of the said corporations have refused and are refusing in any wise to recognize the rights or authority of those who were officers, directors and stockholders of said corporations at the time when he undertook the possession and control thereof, and the said defendants are continuing in the possession and control of said property thus taken and seized, and in the operation of the business and affairs of the defendants Botany Worsted Mills and Stoeck & Sons, Inc., all of which are being conducted without lawful right or authority and without any pretense of right, excepting such as is unlawfully claimed by the Alien Property Custodian under color of the "Trading with the Enemy Act."

Fourteenth. On information and belief, complainant further states that on or about the 20th day of March, 1918, when
10 the defendant, A. Mitchell Palmer, as Alien Property Custodian, took over the control of the defendant Botany Worsted Mills, that corporation was and now is in every respect solvent; that its assets were and are of the value of upwards of Twenty-five Million Dollars; that it had on hand a surplus and reserve fund of Eleven Million Three Hundred and Sixty-eight Thousand Four Hundred and Twenty-seven and 40/100 (\$11,368,427.40) dollars, of which the defendant, Palmer, as Alien Property Custodian, took possession; that on the same day when the said Alien Property Custodian assumed control of the defendant, Stoeck & Sons, Inc., that Company was and has ever since been solvent, having on hand an undivided surplus and securities amounting approximately to One Million Three Hundred and Ninety Thousand and Seven Hundred and Thirty-eight and 42/100 (\$1,390,738.42) dollars; that neither of said corporations possessed or dealt in perishable property; that when the defendant, the Alien Property Custodian, took over their assets, it was not necessary, nor has it at any time since been necessary, to sell the assets of either of said corporations so taken over by the said Alien Property Custodian, for the purpose of preventing waste or to protect property of said corporations or either of them or the rights of any person who might ultimately become entitled thereto or to the benefit thereof; that it is not necessary for the preservation of the interests of the owner of the shares of stock of the Botany Worsted Mills or of the defendant Stoeck & Sons, Inc., or the value of said shares that they be sold or disposed of at this time; that nevertheless, the defendant, Palmer, as Alien Property Custodian, in violation of the Fifth Amendment to the Constitution of the United States, and without due process of law, and in violation of Section 12 of

11 said "Trading with the Enemy Act," on or about the 2nd day of November, 1918, and many times since that day, advertised in the daily newspapers of New York City and otherwise, and wrongfully, unlawfully, without due process of law, and without authority of law, to advertise and offered for sale Twenty-Four Thousand Four Hundred and Ten (24,410) shares of stock of said Botany Worsted Mills, which include the 20,590 shares of stock of said company, owned by the defendant, Stoehr & Sons, Inc., such sale to take place on December 2nd, 1918 (which sale has now been postponed until December 17, 1918), and proposes, in violation of the terms of the "Trading with the Enemy Act" and of the aforesaid provision of the Constitution of the United States, to sell all of said shares of stock without due process of law and without giving to Stoehr & Sons, Inc., or to the complainant, or to the stockholders of said corporation, notice or an opportunity to be heard in any judicial proceedings looking to the condemnation, sale or disposition of said shares of stock, and proposes by and through the sale so advertised to deprive the defendant, Stoehr & Sons, Inc., and the complainant and the other stockholders of said corporation of their interest and ownership in the shares of stock of the Botany Worsted Mills belonging to Stoehr & Sons, Inc., and to deprive them of their ownership and their legal and equitable interests in said shares of stock and of their property therein and to substitute for their property and property rights in said shares of stock such sum as may be realized at such proposed sale for such shares as the net proceeds received therefor, to the great and irreparable injury which will thereby be sustained by the defendant, Stoehr & Sons, Inc., the complainant and the other stockholders of said corporation.

Fifteenth. The defendant, the Alien Property Custodian, has published, circulated and issued the terms and conditions on which he proposes to sell the shares of stock so advertised by him.
12 among which terms are the following, to wit: that such property will be sold only to an American citizen or citizens, or to a corporation incorporated within and under the authority of the laws of a state or territory of the United States or any of its insular possessions; but the Alien Property Custodian shall have the right to exclude from bidding at any such sale and/or from purchasing or otherwise acquiring the above described property, any corporation which he shall, after investigation, determine to be controlled, managed or operated, wholly or mainly, by or for the account or benefit of a person or persons not a citizen of the United States or of its insular possessions; that the Alien Property Custodian and one of his appointees known as the Director of the Bureau of Sales acting for and under him, shall have the right to require, either before or after any bidding or acceptance of any bid, evidence that the bidder is qualified as above provided, to bid for and purchase said property; and also, that no inspection of the plant will be allowed except upon written order from said Director of Sales, to be given only to those (a) who have qualified as bidders, or (b) who shall have deposited with said Director of Sales a certified check for

Twenty-five Thousand (\$25,000.00) dollars, said deposit to be returned upon the qualification of said person as a bidder, in the event such person shall so qualify; otherwise as soon as practicable after the sale; and the terms and conditions of sale are in other respects, unreasonable and onerous. The shares of the Botany Worsted Mills are not listed on any stock exchange, and a sale of what constitutes practically two-thirds of all of its shares at a single forced sale, will inevitably result in the realization of but a small part of their fair and true value. There can be but limited competition at
13 such a sale. No market value exists for the shares of stock proposed to be sold. A sale of so large a proportion of the entire capital stock of the Company at one time will necessarily result in the sacrifice of the shares proposed to be sold.

Complainant further charges that said terms and conditions of sale as promulgated by said defendant, Alien Property Custodian, are unreasonable and are injurious to the interest of said companies and the stockholders thereof, in which complainant has an interest as a stockholder in Stoeck & Sons, Inc., as aforesaid; that the defendant, the Alien Property Custodian, has in effect prohibited all persons and corporations who are the citizens or subjects of the several nations of the world with whom the United States is at peace and has commercial treaties which are referred to in paragraph Seventeenth hereof, and whom the United States has recognized as favored nations to be dealt with on an equality with American citizens in the matter of acquiring property within the United States, from lawfully bidding for and acquiring the shares of stock of the Botany Worsted Mills proposed to be sold, that as a result of said action by the defendant, the Alien Property Custodian, the number of the prospective purchasers will be materially reduced and the proposed sale will necessarily result in the undue sacrifice of the property and property rights of the defendant, Stoeck & Sons, Inc., and of the complainant and the other stockholders of that corporation in such shares of stock, to the great and irreparable injury of the complainant and the stockholders of the defendant, Stoeck & Sons, Inc., and of said corporation as the owner of the shares so proposed to be sold.

And your orator further charges, and he verily believes, that unless the sale so advertised by the said Alien Property Custodian is restrained by a preliminary injunction issued by this Hon-
14 orable Court, that the said Alien Property Custodian will proceed with said sale so advertised by him on December
17, 1918, or on the day to which such sale may be postponed.

Sixteenth. The proposed sale by the Said Alien Property Custodian of the Twenty Thousand Five Hundred and Ninety (20,590) shares of the capital stock of the Botany Worsted Mills owned by Stoeck & Sons, Inc., is illegal, unwarranted, and in violation of the constitutional rights of complainant and the other stockholders of Stoeck & Sons, Inc., and of that corporation, because it is a domestic corporation and is not an enemy alien, within the meaning of the "Trading with the Enemy Act," because no emergency exists such as is set forth in Section 12 of the said "Trading with the Enemy

Act," which would authorize the said Alien Property Custodian to sell such property because it will be in excess of the powers and duties of the Alien Property Custodian, in this, that such sale is not necessary to prevent waste or to protect such property within the meaning of Section 12 of said "Trading with the Enemy Act" and because it would deprive complainant and the other stockholders of Stoehr & Sons, Inc., and that corporation of their property and property rights without due or any process of law, in violation of the Fifth Amendment to the Constitution of the United States.

Seventeenth. On information and belief, complainant alleges and so states the fact to be that Section 12 of said act of Congress, known as "Trading with the Enemy Act," and the amendments thereto approved, March 28, 1918, and November 12, 1918, and Subsection c of Section 7 of "Trading with the Enemy Act," as amended, in so

15 far as the provisions of said sections purport to authorize the taking of property by a summary and ex parte order without due process of law, are unconstitutional and are in violation of the Fifth Amendment to the Constitution of the United States, providing that: "Nor shall any person be deprived of life, liberty or property without due process of law." In so far as said amendment to said Section 12 of the "Trading with the Enemy Act" restricts the sale of shares, stock or property designated therein, the same is unconstitutional and in contravention of the following treaties, to wit:

Treaty of Commerce and Navigation between United States and Belgium, concluded March 8, 1875, duly ratified by the Senate of the United States, March 16, 1875, and proclaimed by the President June 29, 1875, article I of which treaty is as follows:

"There shall be full and entire freedom of commerce and navigation between the inhabitants of the two countries, and the same security and protection which is enjoyed by the citizens or subjects of each country shall be guaranteed on both sides. The said inhabitants, whether established or temporarily residing within any ports, cities or places whatever of the two countries, shall not, on account of their commerce or industry, pay any other or higher duties, taxes or imports than those which shall be levied on citizens or subjects of the country in which they may be; and the privileges, immunities and other favors, with regard to commerce or industry, enjoyed by the citizens or subjects of one of the two States, shall be common to those of the other."

16 The treaty of Commerce and Peace between the United States and Italy, concluded February 26, 1871, duly ratified and proclaimed by the President on November 23, 1871, article I of which is as follows:

"There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation.

"Italian citizens in the United States, and citizens of the United States in Italy, shall mutually have liberty to enter with their ships

and cargoes all the ports of the United States and of Italy, respectively, which may be open to foreign commerce. They shall also have liberty to sojourn and reside in all parts whatever of said territories. They shall enjoy, respectively, within the States and possessions of each party, the same rights, privileges, favors, immunities, and exemptions for their commerce and navigation as the natives of the country wherein they reside, without paying other or higher duties or charges than are paid by the natives, on condition of their submitting to the laws and ordinances there prevailing.

"War vessels of the two Powers shall receive in their respective ports the treatment of those of the most favored nation."

The treaty of Peace, Commerce and Navigation between the United States and the French Republic, concluded September 30, 1800, duly ratified and proclaimed by the President on December 21, 1801, article XI of which is as follows:

"The citizens of the French Republic shall pay in the ports, havens, roads, countries, islands, cities, and towns of the United States, no other or greater duties or imposts, of what nature soever they may be, or by what name soever called, than those which
17 the nation most favored are or shall be obliged to pay; and they shall enjoy all the rights, liberties, privileges, immunities, and exemptions in trade, navigation, and commerce, whether in passing from one port in the said State to another, or in going to and from the same from and to any part of the world, which the said nations do or shall enjoy. And the citizens of the United States shall reciprocally enjoy, in the territories of the French Republic in Europe, the same privileges and immunities, as well for their property and persons as for what concerns trade, navigation, and commerce."

The treaty of Commerce and Navigation between the United States and Great Britain, concluded July 3, 1815, duly ratified and proclaimed by the President on December 22, 1815, article I of which is as follows:

"There shall be between the territories of the United States of America, and all the territories of His Britannic Majesty in Europe, a reciprocal liberty of commerce. The inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports and rivers, in the territories aforesaid, to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of the said territories, respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation respectively shall enjoy the most complete protection and security for their commerce, but subject always to the laws and statutes of the two countries, respectively."

18 Treaty of Commerce and Navigation between the United States and the Republic of Liberia, concluded October 21, 1862, duly ratified and proclaimed by the President on March 18, 1863, article II of which is as follows:

"There shall be reciprocal freedom of commerce between the United States of America and the Republic of Liberia. The citizens of the United States of America may reside in and trade to any part of the territories of the Republic of Liberia to which any other foreigners are or shall be admitted. They shall enjoy full protection for their persons and properties; they shall be allowed to buy from and to sell to whom they like, without being restrained or prejudiced by any monopoly, contract, or exclusive privilege of sale or purchase whatever; and they shall, moreover, enjoy all other rights and privileges which are or may be granted, to any other foreigners, subjects, or citizens of the most favored nation. The citizens of the Republic of Liberia shall, in return, enjoy similar protection and privilege in the United States of America and in their territories."

The treaty of Friendship, Commerce and Navigation between the United States and the Republic of Honduras, concluded July 4, 1864, article III of which is as follows:

"It being the intention of the two high contracting parties to bind themselves by the preceding articles, to treat each other on the footing of the most favored nation, it is hereby agreed between them that any favor, privilege, or immunity whatever, in matters of commerce and navigation, which either contracting party has actually granted, or may hereafter grant, to the subjects or citizens of any other State, shall be extended to the subjects or citizens of the other high contracting party gratuitously, if the concession in favor of that other nation shall have been gratuitous; or in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional."

The treaty of Friendship, Commerce and Navigation between the United States and Denmark, concluded April 26, 1826, duly ratified and proclaimed by the President on October 14, 1826, article II of which is as follows:

"The contracting parties being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens and subjects of each may frequent all the coasts and countries of the other, (with the exception hereafter provided for in the sixth article,) and reside and trade there in all kinds of produce, manufactures and merchandise; and they shall enjoy all the rights, privileges and exemptions, in navigation and commerce, which native citizens or subjects do or shall enjoy, submitting themselves to the laws, decrees and usages there established, to which native

citizens or subjects are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties, respectively, according to their own separate laws."

20 The treaty of Peace and Commerce between the United States and the republic of Peru, concluded August 31, 1887, duly ratified and proclaimed by the President on November 7, 1888, Article XV of which is as follows:

"The high contracting parties promise and engage to give full and perfect protection to the persons and property of the citizens of each other of all classes and occupations, who may be dwelling or transient in the territories subject to their respective jurisdiction; they shall have free and open access to the tribunals of justice for their judicial recourse, on the same terms as are usual and customary with the natives or citizens of the country in which they may be, and they shall be at liberty to employ, in all causes, the advocates, attorneys, notaries, or agents, of whatever description, whom they may think proper. The said citizens shall not be liable to imprisonment without formal commitment under a warrant signed by a legal authority, except in cases flagranti delicti; and they shall in all cases be brought before a magistrate or other legal authority for examination within twenty-four hours after arrest; and if not so examined, the accused shall forthwith be discharged from custody. Said citizens, when detained in prison, shall be treated, during their imprisonment, with humanity, and no unnecessary severity shall be exercised toward them."

The treaty of Commerce and Navigation between the United States and Portugal, concluded August 25, 1840, and proclaimed by the President April 24, 1841, Article I of which is as follows:

21 "There shall be, between the territories of the high contracting parties, a reciprocal liberty of commerce and navigation. The citizens and subjects of their respective States shall, mutually, have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is or shall be permitted. They shall be at liberty to sojourn and reside in all parts of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce."

Eighteenth. On November 20, 1918, complainant duly protested to the said Alien Property Custodian against the proposed sale of the shares of stock hereinbefore mentioned, a copy of which protest is herewith attached marked "Complainant's Exhibit No. II." On November 23, 1918, complainant duly filed with defendant, A. Mitchell Palmer, his notice of claim, under oath, under Section 9 of

said "Trading with the Enemy Act," a true copy of which is herewith attached, marked Complainant's Exhibit III and made a part hereof and made a part of this Bill of Complaint, but his protests have been ignored; that said Defendant-Directors of said Stoebr & Sons, Inc., are the creatures of and were nominated and elected by and through the orders of said defendant, A. Mitchell Palmer, as Alien Property Custodian, and to carry out his instructions, and that it would be useless to make a demand upon such Defendant-Directors to institute this suit, and for this reason he is obliged to appeal for relief to this Court.

Nineteenth. Unless a preliminary injunction duly issues in this case, the rights of complainant in the shares of stock of the said Botany Worsted Mills owned by Stoebr & Sons, Inc., and
 22 the right of the said Stoebr & Sons, Inc., in said Twenty Thousand Five Hundred and Ninety (20,590) shares of stock of the said Botany Worsted Mills, will be defeated and your orator will suffer irreparable injury incapable of being measured in damages in an action at law.

Twentieth. Forasmuch as complainant is without relief in the premises, except in a Court of Equity, and to the end that he may obtain the relief to which he is entitled in the premises, he now prays the Court to grant him due process by subpoena directed to A. Mitchell Palmer, as Alien Property Custodian, Stoebr & Sons, Inc., Botany Worsted Mills and Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, James N. Wallace and Richard Stockton, as Directors of said Botany Worsted Mills, Francis P. Garvan, Andrew B. Duvall, Paul Kieffer and James N. Wallace, as Directors of said Stoebr & Sons, Inc., requiring and commanding them severally to appear herein and answer this Bill of Complaint, answer under oath being hereby expressly waived; that the cloud upon the title of the said shares of stock produced by the action of the aforesaid defendants in seizing said shares of stock and in advertising them for sale may be removed and the title to said shares of stock quieted; that the action of the said defendants as described in this bill of complaint may be declared illegal and in violation of the rights of your orator, and that said Act of Congress, known as "Trading with the Enemy Act" and the amendments thereto, may be held to be in contravention of the fifth amendment of the Constitution of the United States and as depriving complainant and defendant Stoebr & Sons, Inc., of his and its property without due process of law within the
 23 meaning of the said amendment of the Constitution of the United States, and that a preliminary injunction be issued enjoining and restraining the said defendants-directors from transferring said shares of stock to the name of the said Alien Property Custodian, and enjoining and restraining the said defendant, A. Mitchell Palmer, as Alien Property Custodian, from selling or offering for sale the Twenty Thousand Five Hundred and Ninety (20,-

590) shares of capital stock of the Botany Worsted Mills owned by Stoehr & Sons, Inc., and also from selling or offering for sale any shares of stock held by the said defendant, A. Mitchell Palmer, as Alien Property Custodian in the Botany Worsted Mills, and that upon a final hearing of the Bill that the said preliminary injunction be made permanent. Complainant further prays in the event that the sale of said stock, or any part thereof, is consummated during the pendency of this action, that said fact may be suggested to the Court by a supplemented bill, and that upon a final hearing of this action, such sale or sales, upon notice to the purchaser or purchasers thereof, shall be set aside, and that the defendants, severally and individually, may be directed to account to Stoehr & Sons, Inc., for all loss and damage which may be sustained by the said Stoehr & Sons, Inc., by reason of the wrongful acts herein complained of. And complainant further prays that defendant, A. Mitchell Palmer, as Alien Property Custodian, be ordered, adjudged and decreed to release and surrender all and singular the shares of stock of the defendant Botany Worsted Mills owned by defendant Stoehr & Sons, Inc., seized and taken by him as aforesaid, and to account for his acts in and about his attempted possession and control of such shares of stock and in and about the care and conduct of the said property, business and affairs of the said defendant corporations during the period of his possession thereof.

24 Your orator prays for such other and further relief as may be just and equitable.

MAX W. STOEHR,
Complainant.

VALENTINE TAYLOR,
Solicitor for Complainant.
52 Wall Street,
New York City.

LOUIS MARSHALL AND
LOUIS J. VORHAUS,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

Max W. Stoehr, being first duly sworn, deposes and says that he is the complainant of the above-entitled cause; that the foregoing Bill of Complaint was duly read by him, and that he knows the contents thereof, and that the same is true, except as to those matters and things stated by him to be on information and belief, and as to those matters he believes same to be true.

MAX W. STOEHR.

Subscribed and sworn to before me this 2nd day of December, 1918.

SAMUEL K. ABRAHAMS,

Notary Public
in and for the County of Bronx.

Bronx Co. Clerk No. 24.
 Bronx County Register's No. 220.
 New York County Clerk's No. 168.
 New York County Register's No. 10149.
 Kings County Clerk's No. 15.
 Kings County Register's No. 157.
 Queens County Clerk's No. 1542.

25

EXHIBIT I.

Agreement made at Passaic in the State of New Jersey, on the 20th day of February, 1917, between Kammgarn-Spinnerei Stocher & Co., Aktiengesellschaft of Plagwitz-Leipzig, Germany, hereinafter called the "Leipzig Company," party of the first part, and Stocher & Sons, Inc., hereinafter called the "New York Company," party of the second part, witnesseth:

Whereas, the Leipzig Company is beneficially interested in Fourteen thousand nine hundred (14,900) shares of the capital stock of the Botany Worsted Mills, a New Jersey corporation, which said shares of stock are now standing in the name of Hans F. Stocher and Max W. Stocher and are represented by the following certificates, each certificate being for Five (5) shares of said stock:

No. 51 to 1050, No. 3441 to 3500, No. 4061 to 500, No. 1051 to 1400, No. 2001 to 2017, No. 2041 to 2060, No. 2151 to 2171, No. 2861 to 2884, No. 2890 to 2898, No. 3161 to 3260, No. 5251 to 5369, No. 5389 to 5411, No. 5451 to 5750;

and

Whereas, the Leipzig Company is desirous of selling and said New York Company is desirous of purchasing said interest on the terms and conditions hereinafter set forth,

Now therefore, in consideration of the premises and of Five thousand (\$5,000) Dollars paid by the New York Company to the Leipzig Company on account of the purchase price, the receipt whereof is hereby acknowledged, and in further consideration of the
 26 mutual promises of the parties as herein set forth, it is hereby agreed as follows:

First. The Leipzig Company hereby sells, assigns and transfers unto the New York Company all of its interest in said shares and said shares of stock shall be forthwith transferred upon the books of the Botany Worsted Mills and placed in the name of the said New York Company.

Second. The terms of the sale and the purchase price for said shares shall be determined as follows and paid in the following installments:

(a) The purchase price shall be determined by and shall be equal to the book value of said shares as shown by the books of the Botany Worsted Mills. The price shall be payable in five (5) installments, the first instalment being payable one year from date and the subse-

quent installments respectively in two, three, four and five years from date. From the last or fifth installment the sum of \$5,000, paid on account as hereinbefore recited with interest at six per cent from date shall be deducted.

(b) The first annual installment shall be based upon and shall be equal to the book value of said shares, as shown by the books of the Botany Worsted Mills according to the last previous closing of its books on November 30, 1917; and the four subsequent annual installments shall be similarly based upon and shall be equal to the book value of the shares as shown by the last previous closing of the books of the Botany Worsted Mills on the 30th of November preceding the falling due of each of said annual installments.

27 (c) In arriving at the amount of each installment for each of said years the net worth of the hard assets of the Botany Worsted Mills after deducting the total liabilities shall be taken as the basis for the computation of the value per share and no allowance or increase shall be made on such installment for good will.

(d) In addition to the book value of said shares there shall be taken into consideration and account the amount of the dividends received by the New York Company during the said five years from date in the following manner:

During the first year the amount of the entire dividends received by the New York Company on the said shares shall be added to the purchase price and shall be paid with the first installment; during the second year four-fifths of the entire dividends received on said shares of stock by the New York Company, during the third year three-fifths of said dividends, during the fourth year two-fifths of said dividends and during the fifth year one-fifth of said dividends so received on said shares shall be added to the annual installments of the purchase price and shall become part of said purchase price and shall be payable with each of said installments at the end of each of said respective years.

Third. That the certificates of stock for said Fourteen thousand nine hundred shares sold and transferred as hereinbefore provided shall be placed in the possession of the Leipzig Company as collateral security for the amount of the purchase price; but as each annual installment with said additions provided for in paragraph Second, Subdivision d, is paid the New York Company shall have the right to require the redelivery of, and the Leipzig Company will contemporaneously with the payment of each installment redeliver to the New York Company, one-fifth (1/5th) of said shares and thereupon the Leipzig Company shall continue to retain the remaining shares as collateral security for the balance of the purchase price still payable.

Fourth. The New York Company shall have the right at any time to require the deposit of the entire shares of stock or any balance thereof remaining in the hands of the Leipzig Company, with a bank or trust company to be selected by the Leipzig Company, such

deposit to be made with such bank or trust Company in escrow, to be held until the purchase price or the balance remaining unpaid shall have been fully paid or (in case of non-payment of any installment) until the Leipzig Company shall be entitled to said stock under the provisions of paragraph Fifth of this agreement.

Fifth. In the event that any of the said annual installments with said additions provided for in paragraph Second, sub-division d hereof, shall not be paid when due, then the Leipzig Company shall notify the New York Company in writing that it requires the payment of the installment then due together with the said additions and in the event that the New York Company shall not within sixty (60) days after said demand pay the said installment with the additions then the said shares of stock or any remaining balance of said stock shall be forthwith retransferred to the said Leipzig Company on the books of the Botany Worsted Mills and all rights on the

part of the New Jersey Company to said stock or any such
29 balance shall cease and the Leipzig Company shall retain the
Five thousand (\$5,000) dollars, paid on account as hereinbefore recited, in full settlement of any claim against the New York Company and thereupon neither of said companies shall have any further claim against the other arising under or by reason of this agreement; it being understood that the non-payment of any subsequent installment shall not affect the portion or portions of the stock which may have been fully paid for by a previous installment or installments.

In witness whereof the parties hereto have affixed their corporate signatures the day and year above written.

KAMMGARNSPINNEREI STOEHR & CO.,

Aktiengesellschaft,

By HANS E. STOEHR.

In the presence of

CARL ZIMMERMANN.

STOEHR & SONS, INC.,

By GEORG G. ROHLIG,

Vice President.

Attest:

MAX W. STOEHR,
Secretary.

30

EXHIBIT II.

Protest.

To the Honorable A. Mitchell Palmer,
Alien Property Custodian,
Washington, D. C.:

The undersigned, Max W. Stochr, an American citizen, and a bona fide stockholder of record of Forty-four (44) shares of stock of Stochr & Sons, Inc., a domestic corporation, organized under the laws of the State of New York, does hereby protest against the contemplated action by the Alien Property Custodian in advertising and offering for sale One Thousand Two Hundred and Ninety (1,290) shares of the capital stock of Botany Worsted Mills, a corporation duly organized under the laws of the State of New Jersey, owned by said Stochr & Sons, Inc.

The undersigned also protests against the proposed sale of 24,410 shares of the Botany Worsted Mills and 1,290 shares of stock of said company as advertised by you. Stochr & Sons, Inc., own 20,580 shares of said stock.

The grounds of this protest are as follows:

First. Your contemplated action of seiling and disposing of the said shares of stock of Stochr & Sons, Inc., and their interest therein is tantamount to taking property from said Stochr & Sons, Inc., and from this protestant and deprive him and it of property without due process of law, in violation of the 5th Amendment to the Constitution of the United States; that Section 12 of the "Trading with the Enemy Act" and the amendments thereto are unconstitutional, as depriving Stochr & Sons, Inc., and this protestant of property without due process of law, in violation of said 5th Amendment and in contravention with existing treaties with many nations with which the United States is at peace.

31 Second. Stochr & Sons, Inc., is a domestic corporation; it is not an "alien enemy" within the meaning of the "Trading with Enemy" Act. American citizens have an interest therein and the Alien Property Custodian has no jurisdiction or power over said corporation to sell the said stocks or any part thereof.

Third. The sale of said shares of stock or any part thereof is not necessary to prevent waste or to protect the property of Botany Worsted Mills of Stochr & Sons, Inc. None of the contingencies provided for in the statute are present. It is only when the contingencies set forth in the statute do exist that the Alien Property Custodian is authorized to sell.

The undersigned respectfully submits that the conditions set forth in the statute are utterly wanting both in the case of Botany Worsted Mills as well as in Stochr & Sons, Inc. The Alien Property Custodian is therefore without jurisdiction in the premises.

Fourth. The terms of sale restricting the purchasers to American citizens only and excluding therefrom citizens from other countries with whom the United States is at peace, and who are not enemy aliens, are onerous and prejudicial to the interests of Stoehr & Sons, Inc., and of the undersigned as a stockholder of same, as they will, necessarily, tend to limit the bidding at the proposed sale and will result in a sacrifice of the property to be sold.

Dated, New York, November 23, 1918.

Respectfully yours,

MAX W. STOEHR,
135 Central Park West,
New York City.

32

EXHIBIT III.

Notice of Claim under Oath, under Section 9 of "Trading with the Enemy Act," by Max W. Stoehr.

STATE OF NEW YORK,
County of New York, ss:

Max W. Stoehr being first duly sworn, deposes and says:

Deponent is a citizen of the United States, residing at No. 135 Central Park West, in the Borough of Manhattan, City and County of New York in said State. Since the 17th day of February, 1917, he has continuously been, and now is, the lawful owner and holder of record of forty-four shares of the capital stock of Stoehr & Sons, Inc., a corporation duly incorporated under the laws of the State of New York.

Deponent further states, that Stoehr & Sons, Inc., is the owner of 5,690 shares of the capital stock of Botany Worsted Mills, a corporation duly organized under the laws of the State of New Jersey.

Deponent further states, that in or about the latter part of the year 1914 Kammgarnspinnerei Stoehr & Co., Actiengesellschaft of Plagwitz, Leipzig, Germany, the owner in fact and of record of 14,900 shares of the capital stock of the defendant, Botany Worsted Mills, caused to be transferred on the books of said Company 14,900 shares of the capital stock of said company in trust for said beneficial owner of same in the following manner, to wit: 10,000 shares to Hans E. Stoehr and 4,900 shares to the deponent. That thereupon the said Trustees did, on February 20, 1917, pursuant to an agreement made between the aforesaid beneficial owner of same and Stoehr & Sons,

dated February 20, 1917, a copy of which deponent is informed is in your possession, transfer to Stoehr & Sons, Inc., 14,900 shares of stock of said Botany Worsted Mills; that by said contract said beneficial owner agreed to sell and transfer to said Stoehr & Sons, Inc., and the said Stoehr & Sons, Inc., agreed to purchase from the said Trustees, the aforesaid 14,900 shares of the capital stock of the defendant, Botany Worsted Mills, and to pay therefor the book value of the same; that the sum of \$5,000 was duly paid

by said Stoehr & Sons, Inc., to said beneficial owner of said shares as part purchase price; that by reason of the said contract of sale and the part performance thereof the said Stoehr & Sons, Inc., became possessed of the title in and to said 14,900 shares of the said capital stock of the defendant, Botany Worsted Mills.

Deponent further states, that as a stockholder in said Stoehr & Sons, Inc., he has a beneficial interest in said 20,590 shares of stock of the Botany Worsted Mills.

Deponent files this claim under the provision of Section 9 of the "Trading with the Enemy Act" in behalf of himself and of the said Stoehr & Sons, Inc., said Stoehr & Sons, Inc., being now under the control of the Alien Property Custodian is itself incapable of making this claim.

Under the provisions of said Section 9, deponent hereby makes application to the Alien Property Custodian for the return, delivery and transfer of said stock to said Stoehr & Sons, Inc., and in the meantime and until the title to said shares of stock is determined the Alien Property Custodian is hereby requested to retain in his custody the said shares of stock, as is by the Statute provided.

The Alien Property Custodian is hereby further requested not to proceed with the sale of said shares of stock as by him advertised to be held on December 2nd, 1918.

MAX W. STOEHR.

Subscribed and sworn to before me this 26th day of November, 1918.

SAMUEL K. ABRAHAMS,

[SEAL.] *Notary Public, in and for the County of Bronx.*

New York County Clerk's No. 168.

35 The President of the United States of America to James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. Mac Eldowney, Richard Stockton, A. Mitchell Palmer, individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by Max W. Stoehr & Sons, suing in his own behalf as a stockholder in Stoehr & Sons, Inc., and in behalf of all others similarly situated, and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty on you and each of you of Two Hundred and Fifty Dollars (\$250.).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, on the

2nd day of December, in the year one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

ALEX. GILCHRIST, JR.,
Clerk.

VALENTINE TAYLOR,
Solicitor for Complainant.

The defendants are required to file their answer or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

ALEX GILCHRIST, JR.,
Clerk.

36 [Endorsed:] District Court of the U. S., Southern District of N. Y. Max W. Stoehr, suing in his own behalf as a stockholder of Stoehr & Sons, Inc., etc., complainant, agst. James N. Wallace et al., defendants. Subpoena. U. S. District Court, S. D. of N. Y. Filed Dec. 4, 1918.

37 District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Supplemental Bill.

Valentine Taylor, Solicitor for Complainant, No. 52 Wall Street, Borough of Manhattan, New York City.

Louis Marshall, Louis J. Vorhaus, of Counsel.

U. S. District Court, S. D. of N. Y. Filed Dec. 16, 1918.

38 In the District Court of the United States for the Southern District of New York.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

Supplemental Bill.

To the Honorable Judges of the District Court of the United States for the Southern District of New York, in Equity sitting:

Now comes the complainant herein, and by leave of the Court first had and obtained, files this his Supplemental Bill of Complaint.

39 First. Since the filing of the original bill herein your orator, upon advice of counsel, has, on the 12th day of December, 1918, duly filed a notice of his claim, under oath, to the defendant A. Mitchell Palmer, as Alien Property Custodian, a true copy of which is hereto annexed, and marked "Complainant's Supplemental Bill, Exhibit Number 1," and made a part hereof.

Second. Your orator further states that under the provisions of said Section 9 of the said "Trading with the Enemy Act," when notice of claim under oath is so filed, and an action in equity commenced, it is the duty of the said Alien Property Custodian to retain the property in his possession, the title of which is in controversy, until the final determination of the rights of the parties to such property.

Third. By reason of the premises, and for reasons stated in the original bill of complaint herein, your orator alleges that he is entitled, as a matter of right to an order of this Court, restraining the said Alien Property Custodian from proceeding with the sale of the property set forth in the bill of complaint until the final determination of the issues raised by the pleadings in this case.

Wherefore, your orator, supplementing the prayer in the original Bill of Complaint, and not waiving any of same, prays that a preliminary injunction be issued, restraining the defendant A. Mitchell Palmer, as Alien Property Custodian, from selling and disposing of the shares of stock set forth in the original Bill of Complaint until the final hearing and determination of this cause,

22 MAX W. STOEHR, ETC., VS. JAMES N. WALLACE ET AL.

40 And your orator prays for such other and further relief
in the premises as to the Court may seem just.

MAX W. STOEHR,
Complainant.

VALENTINE TAYLOR,
Solicitor for Complainant,
52 Wall Street,
New York City.

STATE OF NEW YORK,
County of New York, ss:

Max W. Stoehr, being first duly sworn, deposes and says that he is the complainant of the above-entitled cause; that the foregoing Supplemental Bill of Complaint was duly read by him and that he knows the contents thereof, and that the same is true, except as to the matters and things stated by him to be on information and belief, and as to those matters he believes same to be true.

MAX W. STOEHR.

Subscribed and sworn to before me this 12th day of December, 1918.

SAMUEL K. ABRAHAMS,
Notary Public
in and for the County of Bronx.

[SEAL.]

New York County Clerk's Office No. 168.

41 EXHIBIT NUMBER ONE.

Complainant's Supplemental Bill.

A. P. C. Form No. 111.

Alien Property Custodian.

Notice of Claim Pursuant to Section 9 of "Trading with the Enemy Act."

To A. Mitchell Palmer, Alien Property Custodian,
Washington, D. C.:

The undersigned, hereinafter referred to as claimant, reserving to himself the right to object to the validity and constitutionality of the "Trading with the Enemy Act," pursuant to Section 9 of said Act, hereby gives you notice of claim, as follows, and hereby agrees to furnish such other information and proof as you may require.

1. Name of claimant (individual, partnership, association, corporation): Max W. Stoehr, as a stockholder of Stoehr & Sons, Inc.

2. Address of claimant: 21 West 86th Street, New York City.

3. Name of enemy or ally of enemy whose property is affected by this claim: The purchase price under the contract dated February 20th, 1917, a copy of which is herewith attached, marked "Exhibit 1," less \$5,000, paid on account of the subject matter stated therein, is due to Kammgarnspinnerei Stoehr & Co. Aktiengesellschaft, hereinafter called the German Company.

4. Residence or last known address of enemy or ally of enemy: Plagwitz-Leipzig, Saxony, Germany.

5. Name of any other persons, if known to claimant, who have any interest whatever in within claim: Stoehr & Sons, Inc.

6. Address or addresses of such person or persons: 123 Broadway, New York.

7. If the claim, notice of which is hereby given, is made for certain specific property, or for an interest in property, the following questions must be answered:

(a) The said property was conveyed, transferred, assigned, or delivered to Alien Property Custodian by: Claimant is informed that duplicate certificates for the shares of stock of Botany Worsted Mills referred to in the answer to question No. 8 herein, have been made out in the name of the Alien Property Custodian or of his nominee by order of the Board of Directors of Botany Worsted Mills, of Passaic, New Jersey.

(b) The following is an accurate description of the property affected by this notice of claim (this description must be sufficiently complete to identify the property): Five thousand six hundred and ninety (5,690) shares of the capital stock of Botany Worsted Mills, fourteen thousand nine hundred (14,900) shares of the capital stock of Botany Worsted Mills.

8. The nature of the claim, notice of which is hereby given, is as follows: (If the claim is for only part of the property, describe that part; if of an interest, state precisely what the interest is; if a debt, state fully the nature thereof, how it is evidenced, and whether there are any set-offs or counterclaims. Attach verified copies of all papers relied on to support claim.)

Claimant is a citizen of the United States, residing at No. 21 West 86th Street, in the Borough of Manhattan, City, County and State of New York. Since the 17th day of February, 1917, he has continuously been and now is the lawful owner and holder of record of forty-four (44) shares of the capital stock of Stoehr & Sons, Inc., a corporation duly organized under the Laws of the State of New York.

Stoehr & Sons, Inc., is the owner of 5,690 shares of the capital stock of Botany Worsted Mills, a corporation duly organized under the Laws of the State of New Jersey.

In and about the latter part of the year 1914, the German Company, the owner in fact and of record of 14,900 shares of the capital

stock of the Botany Worsted Mills, caused to be transferred on the books of the latter company said 14,900 shares in trust for the German Company, in the following manner, to wit: 10,000

44 shares of Hans E. Stoebr, and 4,900 shares to claimant.

Thereupon, on February 20th, 1917, pursuant to the agreement, marked "Exhibit 1," hereinbefore referred to, made between the German Company and Stoechr & Sons, Inc., dated February 20th, 1917, the aforesaid trustees transferred to Stoechr & Sons, Inc., said 14,900 shares of stock of said Botany Worsted Mills. By said contract the German Company agreed to sell and transfer to Stoechr & Sons, Inc., and the latter agreed to purchase the aforesaid 14,900 shares of the capital stock of the Botany Worsted Mills, and to pay therefor the book value thereof. The sum of \$5,000 was duly paid by Stoechr & Sons, Inc., to the German Company as part purchase price. By reason of the contract of sale and the part performance thereof, Stoechr & Sons, Inc., became vested with the ownership of and title in and to said 14,900 shares of the Botany Worsted Mills. The German Company is entitled to the unpaid balance of the purchase price of said shares pursuant to the terms of said agreement of sale as therein set forth.

As a stockholder in Stoechr & Sons, Inc., claimant has a beneficial interest in said 20,590 shares of stock of Botany Worsted Mills. He now files this claim under the provision of Section 9 of the "Trading with the Enemy Act" in behalf of himself and of all other stockholders of Stoechr & Sons, Inc., similarly situated. That company and its directors are naturally unwilling to present this claim on its behalf.

Under the provisions of that section, claimant hereby makes application to the Alien Property Custodian for the return, 45 delivery and transfer of said stock to said Stoechr & Sons, Inc., and in the meantime and until the title to such shares of stock is determined, the Alien Property Custodian is hereby requested, as by the terms of the statute provided, to retain in his custody the said shares of stock.

The Alien Property Custodian is hereby further requested not to proceed with the sale of the said shares of stock, or to part with the ownership thereof.

The claimant represents and alleges that claimant is not an enemy or ally of enemy; that no person or persons whatsoever, except as above stated, have any interest in or lien upon the proceeds of the claim set forth in the within notice; that this notice is not filed in collusion with any enemy or ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the "Trading with the Enemy Act"; that the claim herein referred to is in all respects bona fide, and that there are no set-offs, counter-claims, or defenses, except as herein stated.

Dated, New York, December 11th, 1918.

MAX W. STOEHR.

46 STATE OF NEW YORK,
County of New York, ss:

I swear that the foregoing statements are true and correct.

MAX W. STOEHR.

Subscribed and sworn to before me this 11th day of December,
1918.

[SEAL.]

SAMUEL K. ABRAHAM'S

Notary Public

in and for the County of Bronx.

Bronx Co. Clerk No. 24.

Bronx County Register's No. 220.

New York County's Clerk No. 168.

New York County Register's No. 10119.

Kings County Clerk's No. 15.

Kings County Register's No. 157.

Queens County Clerk's No. 1542.

47 EXHIBIT I.

Agreement made at Passaic in the State of New Jersey, on the 20th day of February, 1917, between Kammgarn-Spinnrei Stoeck & Co., Aktiengesellschaft of Plagwitz-Leipzig, Germany, hereinafter called the "Leipzig Company," party of the first part, and Stoeck & Sons, Inc., hereinafter called the "New York Company," party of the second part, witnesseth:

Whereas, the Leipzig Company is beneficially interested in Fourteen thousand nine hundred (14,900) shares of the capital stock of the Botany Worsted Mills, a New Jersey corporation, which said shares of stock are now standing in the name of Hans F. Stoehr and Max W. Stoehr and are represented by the following certificates, each certificate being for Five (5) shares of said stock:

No. 51 to 1050, No. 3441 to 3500, No. 4061 to 500, No. 1051 to 1400, No. 204 to 2017, No. 2041 to 2060, No. 2151 to 2171, No. 2861 to 2884, No. 2890 to 2898, No. 3161 to 3260, No. 5251 to 5369, No. 5389 to 5411, No. 5451 to 5750;

and

Whereas, the Leipzig Company is desirous of selling and said New York Company is desirous of purchasing said interest on the terms and conditions hereinafter set forth,

Now therefore, in consideration of the premises and of Five thousand (\$5,000) Dollars paid by the New York Company to the Leipzig Company on account of the purchase price, the receipt whereof is hereby acknowledged, and in further consideration

48 of the mutual promises of the parties as herein set forth, it is hereby agreed as follows:

First. The Leipzig Company hereby sells, assigns and transfers unto the New York Company all of its interest in said shares and said shares of stock shall be forthwith transferred upon the books

of the Botany Worsted Mills and placed in the name of the said New York Company.

Second. The terms of the sale and the purchase price for said shares shall be determined as follows and paid in the following installments:

(a) The purchase price shall be determined by and shall be equal to the book value of said shares as shown by the books of the Botany Worsted Mills. The price shall be payable in five (5) installments, the first instalment being payable one year from date and the subsequent installments respectively in two, three, four and five years from date. From the last or fifth installment the sum of \$5,000. paid on account as hereinbefore recited with interest at six per cent. from date shall be deducted.

(b) The first annual installment shall be based upon and shall be equal to the book value of said shares, as shown by the books of the Botany Worsted Mills according to the last previous closing of its books on November 30, 1917; and the four subsequent annual installments shall be similarly based upon and shall be equal to the book value of the shares as shown by the last previous closing of the books of the Botany Worsted Mills on the 30th of November preceding the falling due of each of said annual installments.

49 (c) In arriving at the amount of each installment for each of said years the net worth of the hard assets of the Botany Worsted Mills after deducting the total liabilities shall be taken as the basis for the computation of the value per share and no allowance or increase shall be made on such installment for good will.

(d) In addition to the book value of said shares there shall be taken into consideration and account the amount of the dividends received by the New York Company during the said five years from date in the following manner:

During the first year the amount of the entire dividends received by the New York Company on the said shares shall be added to the purchase price and shall be paid with the first installment; during the second year four-fifths of the entire dividends received on said shares of stock by the New York Company, during the third year three-fifths of said dividends, during the fourth year two-fifths of said dividends and during the fifth year one-fifth of said dividends so received on said shares shall be added to the annual instalments of the purchase price and shall become part of said purchase price and shall be payable with each of said installments at the end of each of said respective years.

Third. That the certificates of stock for said Fourteen thousand nine hundred shares sold and transferred as hereinbefore provided shall be placed in the possession of the Leipzig Company as collateral security for the amount of the purchase price; but as each
50 annual installment with said additions provided for in paragraph Second, Subdivision d, is paid the New York Com-

pany shall have the right to require the redelivery of, and the Leipzig Company will contemporaneously with the payment of each installment redeliver to the New York Company, one-fifth (1/5th) of said shares and thereupon the Leipzig Company shall continue to retain the remaining shares as collateral security for the balance of the purchase price still payable.

Fourth. The New York Company shall have the right at any time to require the deposit of the entire shares of stock or any balance thereof remaining in the hands of the Leipzig Company, with a bank or trust company to be selected by the Leipzig Company, such deposit to be made with such bank or trust Company in escrow, to be held until the purchase price or the balance remaining unpaid shall have been fully paid or (in case of non-payment of any installment) until the Leipzig Company shall be entitled to said stock under the provisions of paragraph Fifth of this agreement.

Fifth. In the event that any of the said annual installments with said additions provided for in paragraph Second, sub-division *d* hereof, shall not be paid when due, then the Leipzig Company shall notify the New York Company in writing that it requires the payment of the installment then due together with the said additions and in the event that the New York Company shall not within sixty (60) days after said demand pay the said installment with the additions then the said shares of stock or any remaining balance of said stock shall be forthwith retransferred to the said Leipzig Company on the books of the Botany Worsted Mills and all rights on the part of the New York Company to said stock or any such

51 balance shall cease and the Leipzig Company shall retain the Five thousand (\$5,000) dollars, paid on account as hereinbefore recited, in full settlement of any claim against the New York Company and thereupon neither of said companies shall have any further claim against the other arising under or by reason of this agreement; it being understood that the non-payment of any subsequent installment shall not affect the portion or portions of the stock which may have been fully paid for by a previous installment or installments.

In witness whereof the parties hereto have affixed their corporate signatures the day and year above written.

KAMMGARNSPINNEREI STOEHR & CO.,
Aktiengesellschaft,

By HANS E. STOEHR.

In the presence of
CARL ZIMMERMANN.

STOEHR & SONS, INC.,
By GEORG G. ROHLIG,
Vice President.

Attest:

MAX W. STOEHR,
Secretary.

52 United States District Court, Southern District of New York.

MAX W. STOHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., and in Behalf of All Others Similarly Sit-
uated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW
B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J.
Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney,
Richard Stockton, A. Mitchell Palmer, Individually and as Alien
Property Custodian; Stoehr & Sons, Inc., Botany Wopsted Mills,
Francis P. Garvan, and Paul Kieffer, Defendants.

A motion having been made herein for an order directing that
Francis P. Garvan as Alien Property Custodian be substituted as def-
endant herein in place and stead of the defendant A. Mitchell
Palmer, sued as Alien Property Custodian, and said motion having
duly come on to be heard, and no opposition thereto having been
made.

Now, on motion of Francis G. Caffey, solicitor for the defendant
A. Mitchell Palmer it is

Ordered that Francis P. Garvan as Alien Property Custodian be
substituted as the defendant herein in place and stead of the defend-
ant A. Mitchell Palmer, sued as Alien Property Custodian, and that
the time of the defendant Francis P. Garvan as Alien Property
Custodian to answer the bill of complaint herein be extended to the
14th day of April, 1919.

AUGUSTUS N. HAND,
U. S. D. J.

53 [Endorsed:] District Court of the U. S., Southern District
of N. Y. Max W. Stoehr, suing in his own behalf as a stock-
holder in Stoehr & Sons, Inc., etc., versus James N. Wallace, Thomas
Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, et al.
Order. Francis G. Caffey, United States Attorney. U. S. District
Court, S. D. of N. Y. Filed April 9, 1919.

54 District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Answer of A. Mitchell Palmer Individually.

Francis G. Caffey, Solicitor for defendant A. Mitchell Palmer, individually, U. S. Court and Post Office building, New York city.

George L. Ingraham, Lee C. Bradley, of Couns.l.

U. S. District Court, S. D. of N. Y. Filed May 26, 1919.

55 District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. DUVALL, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

Answer of A. Mitchell Palmer Individually.

Now comes the above named defendant, A. Mitchell Palmer, individually, and answering the bill of complaint and supplemental bill exhibited in this cause says:

56 First. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph first of the bill that Max W. Stoehr is and ever since 1910 has been a citizen of the United States and of the State of New York and an actual resident in the City and County of New York, in said

State; and that the defendant Stocher & Sons, Inc., is and ever since February 17, 1917, has been a corporation duly organized by and under the laws of the State of New York.

The said defendant admits the other allegations of paragraph first of the bill.

Second. This defendant denies the allegations of paragraph second of the bill.

Third. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph third of the bill.

Fourth. This defendant admits the allegations of paragraph fourth of the bill.

Fifth. This defendant admits the allegations of paragraph fifth of the bill.

Sixth. This defendant denies the allegations of paragraph sixth of the bill.

Seventh. This defendant denies the allegations of paragraph seventh of the bill, except that he admits that prior to February, 1915, 14,900 shares of the capital stock of the Botany Worsted Mills stood on the books of said Botany Worsted Mills in the name of Kammgarnspinnerei Stocher & Company, Aktiengesellschaft; and that on or about February 15, 1915, ten thousand (10,000) of said 14,900 shares of said stock were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stocher & Company, Aktiengesellschaft, into the name of Hans E. Stocher, as Trustee; and that on or about February 26, 1915, the remaining 4,900 shares of said 14,900 shares were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stocher & Company, Aktiengesellschaft, into the name of Max W. Stocher, as Trustee.

Eighth. This defendant denies the allegations of paragraph eighth of the bill.

Ninth. This defendant denies the allegations of paragraph ninth of the bill, except that he admits that on April 6, 1917, and December 7, 1917, respectively, the United States of America recognized that a state of war existed between the United States and the then Empire of Germany and the then Empire of Austria-Hungary, and except also that he admits that an armistice was signed on November 11, 1918.

Tenth. This defendant denies the allegations of paragraph tenth of the bill.

Eleventh. This defendant denies the allegations of paragraph eleventh of the bill.

Twelfth. This defendant denies the allegations of paragraph twelfth of the bill.

58 Thirteenth. This defendant denies the allegations of paragraph thirteenth of the bill.

Fourteenth. This defendant admits that on or about the 20th of March, 1918, the defendants Botany Worsted Mills and Stoehr & Sons, Inc., were and now are solvent, and that the said Botany Worsted Mills had a large surplus and reserve fund.

This defendant denies each and all of the other allegations of paragraph fourteenth of the bill.

Fifteenth. This defendant admits that the terms and conditions of sale of the stock of the Botany Worsted Mills advertised by the Alien Property Custodian to be sold are substantially alleged in paragraph fifteenth of the bill.

This defendant denies each and all of the other allegations and conclusions of paragraph fifteenth of the bill.

Sixteenth. This defendant denies the allegations of paragraph sixteenth of the bill.

Seventeenth. This defendant denies the allegations of paragraph seventeenth of the bill.

Eighteenth. This defendant admits that on or about November 29, 1918, there was filed in the office of the Alien Property Custodian an instrument purporting to be a notice of claim under oath under Section 9 of the "Trading with the Enemy Act" by Max W. Stoehr, and that a copy of said instrument is annexed to the bill of complaint in this cause marked Exhibit III.

This defendant denies each and all of the other allegations of paragraph eighteenth of the bill.

59 Nineteenth. This defendant denies the allegations of fact and conclusions of paragraph nineteenth of the bill.

Twentieth. This defendant denies the allegations of fact and conclusions of paragraph twentieth of the bill.

Twenty-first. This defendant denies the allegations of paragraph first of the supplemental bill, purporting to be sworn to December 12, 1918, except that he admits that on or about December 12, 1918, a notice was filed with the Alien Property Custodian substantially in the form annexed to the supplemental bill and marked "Complainant's Supplemental Bill, Exhibit No. 1."

Twenty-second. This defendant denies the allegations of paragraph second of the supplemental bill.

Twenty-third. This defendant denies the allegations of paragraph third of the supplemental bill.

As a first, separate and distinct defense to the bill of complaint of the complainant herein, this defendant further alleges and shows to the Court:

Twenty-fourth. The complainant is not a person claiming any interest, right or title in any money or other property which
60 has been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, pursuant to the provisions of the "Trading with the Enemy Act," as amended, so as to entitle the complainant to the benefit of the provisions of Section 9 of the "Trading with the Enemy Act," as amended; that the complainant is not a claimant within the meaning of said Section 9 of the "Trading with the Enemy Act," and was and is not entitled to make or file with the Alien Property Custodian a notice of his claim, under oath, or to institute a suit in equity in this Court to establish the interest, right, title or debt claimed to be due, that the plaintiff is not a person claiming any interest, right or title to the stock of the Botany Worsted Mills described in the complaint, and that therefore this Court is without jurisdiction to grant the relief prayed for in the bill herein.

For a second, separate and distinct defense to the bill of complaint of the complainant herein, the said defendant further alleges and shows to the Court:

Twenty-fifth. Prior to February 15, 1915, Kammgarnspinnerei Stoehr & Co., Aktiengesellschaft of Plagwitz, Leipzig, Germany, which Company as this defendant is informed and believes was and is a corporation organized under the laws of the then Empire of Germany, was the owner of record on the books of the
61 Botany Worsted Mills, a corporation organized under the laws of the State of New Jersey, of 14,900 shares of the capital stock of the Botany Worsted Mills. On or about the 15th of February, 1915, there was transferred on the books of the Botany Worsted Mills 10,000 shares of the said 14,900 shares to Hans E. Stoehr as Trustee for said Kammgarnspinnerei Stoehr & Company. On or about February 26, 1915, there was transferred on the books of the Botany Worsted Mills the remaining 4,900 of said shares to Max W. Stoehr as Trustee for said Kammgarnspinnerei Stoehr & Company.

Twenty-sixth. Prior to February 19, 1917, the complainant Max W. Stoehr, Eduard Stoehr, who was the father of the complainant and who was a German subject residing in Germany, Hans E. Stoehr, who was a brother of the complainant and who was a German subject, and Georg Stoehr who was a brother of the complainant and who was a German subject residing in Germany, were partners engaged in business under the firm name and style of Stoehr & Sons. The principal place of business of said partnership was in New York City, New York.

Twenty-seventh. The purposes of said co-partnership of Stoehr & Sons as stated in the agreement of copartnership among the said partners were to do a general mercantile and commission business; to engage in the purchase, lease or sale of real or other property, including the purchase and sale of shares of stock and other securi-

ties as well as of goods and merchandise; to participate in industrial enterprises; to purchase, lease and sell and be interested
 62 in textile and other factories, and to dispose of the output of such factories; and in general to promote the interests of the partners and of their families by consolidating various property interests and to manage such property interests through the said copartnership.

Twenty-eighth. The capital of said copartnership of Stoehr & Sons as stated in said copartnership agreement was the sum of \$560,000 contributed by the various partners as follows:

Eduard Stoehr a German citizen residing in Germany..	\$420,000.
Hans E. Stoehr a German citizen	80,000.
Georg Stoehr a German citizen residing in Germany ...	50,000.
Max W. Stoehr the complainant herein	10,000.
Total	\$560,000.

Twenty-ninth. On or about February 16, 1917, there was filed in the office of the Secretary of State of New York, a certificate of incorporation of a corporation Stoehr & Sons, Inc., with an authorized capital stock of \$250,000 consisting of 2,500 shares of the par value of \$100 each. Its principal purposes as stated in the certificate of incorporation were to deal in textile products, cloth and raw material and stocks and bonds. The minutes of the first meeting of its board of directors, held February 19, 1917, contain a resolution authorizing the issuance of the entire stock of the Company for the
 63 business, property, good will, firm name and other assets of Stoehr & Sons, the partnership above referred to, upon the assumption by Stoehr & Sons, Inc., of all the liabilities of the said partnership. The stock of said Stoehr & Sons, Inc., was issued on February 19, 1917, as follows:

Stockholder.	Number of shares.
Max W. Stoehr	1,875
Hans E. Stoehr	357.14
Max W. Stoehr	223.21
Max W. Stoehr	44.65

The said 1,875 shares and the said 223.21 shares issued to Max W. Stoehr as aforesaid were issued to said Max W. Stoehr as Trustee, for said Eduard Stoehr and said Georg Stoehr respectively. The stock so issued was issued to or for the above named stockholders in the proportion that the said partners in said Stoehr & Sons, said copartnership, had been interested in said partnership assets.

Thirtieth. A transfer of the assets of the said partnership of Stoehr & Sons to Stoehr & Sons, Inc., was made by what purports to be a bill of sale dated February 19, 1917, purporting to be signed

"Stoehr & Sons" and witnessed by Max W. Stoehr, the complainant herein. This defendant alleges upon information and belief that the said defendant Stoehr & Sons, Inc., never obtained the title to the said assets of the partnership Stoehr & Sons by reason of said alleged bill of sale or otherwise, and that there was no valid transfer of any right, title or interest in said assets of the partnership of Stoehr & Sons to the defendant Stoehr & Sons, Inc. The

64 partnership agreement of Stoehr & Sons contained a provision to the effect that said Eduard Stoehr and said Hans E. Stoehr should be the active partners, and said Georg Stoehr and said Max W. Stoehr should be the silent or passive partners, and that the active partners should have the right to conduct the business in such manner as they might think best, except that no transaction involving more than \$25,000 should be consummated without the written consent of all the partners. This defendant further alleges that the assets of Stoehr & Sons so attempted to be transferred to Stoehr & Sons, Inc., were largely in excess of the sum of \$25,000, and that no such written consent was ever obtained to the pretended transfer of the assets of Stoehr & Sons to Stoehr & Sons, Inc., as above set forth. This defendant further alleges that said pretended transfer of all the partnership assets of Stoehr & Sons was attempted to be made by Hans E. Stoehr and Max W. Stoehr pretending to act on behalf of all the partners, and was illegal, void and of no effect, and that the issue of the stock of the said corporation, in consideration of the said pretended assignment of the assets of the said co-partnership was ultra vires of the said corporation and void. This defendant further alleges that said transfer, if it had any validity or effect, operated only to transfer the assets of the partnership belonging to said Hans E. Stoehr and said Max W. Stoehr individually and caused a dissolution of the partnership.

Thirty-first. On the same day, to wit, February 19, 1917, all of said 2,500 shares of stock were transferred on the books of

65 Stoehr & Sons, Inc., to Hans E. Stoehr, Max W. Stoehr and one Georg Rohlig as voting trustees under a certain voting trust agreement dated February 19, 1917, between the stockholders of Stoehr & Sons, Inc., and said Hans E. Stoehr, said Max W. Stoehr and said Georg Rohlig, and voting trust certificates were thereupon issued by said voting trustees as follows:

Certificate holder.	Number of shares.
Max W. Stoehr, trustee	1,875
H. E. Stoehr	357.14
Max W. Stoehr, trustee	223.21
Max W. Stoehr	44.65

Max W. Stoehr received and held said voting trust certificates for 1,875 shares and 223.21 shares respectively as trustee for said Eduard Stoehr, a subject and resident of the then Empire of Germany, and

for said Georg Stoechr, a subject and resident of the then Empire of Germany, respectively.

Thirty-second. Among the assets of the partnership of Stoechr & Sons were 5,690 shares of the capital stock of the Botany Worsted Mills, which 5,690 shares were subsequent to February 19, 1917, transferred on the books of the Botany Worsted Mills from Stoechr & Sons to Stoechr & Sons, Inc. Upon information and belief the defendant alleges that said Max W. Stoechr and Hans E. Stoechr through their stock ownership in the Botany Worsted Mills and through said stock ownership of Kammgarnspinnerei Stoechr & Company, controlled the election of directors and otherwise dominated and controlled the action of the Botany Worsted Mills and its officers, and the transfer of said 5,690 shares on the books of the Botany Worsted
66 mills from Stoechr & Sons to Stoechr & Sons, Inc., was made and brought about through said domination and control. But this defendant alleges that there was no delivery of the certificates representing 4,400 shares out of said 5,690 shares endorsed either in blank or to a specified person or persons appearing by the certificates to be the owner or owners of the shares of stock represented thereby from Stoechr & Sons to Stoechr & Sons, Inc., and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and that the title to 4,400 out of said 5,690 shares of stock of the Botany Worsted Mills was not transferred to Stoechr & Sons, Inc., pursuant to the provisions of Chapter 191 of the Laws of 1916 of New Jersey, said Act being entitled "An Act to make uniform the law of transfer of shares of stock in corporations," approved March 18, 1916.

Thirty-third. At the second meeting of the board of directors of Stoechr & Sons, Inc., held February 20, 1917, a resolution was passed purporting to authorize the purchase of the interest of said Kammgarnspinnerei Stoechr & Company in said 14,900 shares of the capital stock of the Botany Worsted Mills by Stoechr & Sons, Inc., from said Kammgarnspinnerei Stoechr & Company. On or about February 20, 1917, an instrument, a copy of which is attached to the bill of complaint herein marked Exhibit 1, was signed in the name of Kammgarnspinnerei Stoechr & Company, Aktiengesellschaft, by
67 Hans E. Stoechr, and was signed in the name of Stoechr & Sons, Inc., by Georg G. Rohlig, Vice-President, which instrument purported to transfer the beneficial interest in the said 14,900 shares from the Kammgarnspinnerei Stoechr & Company, the beneficial owner thereof as above set forth, to the defendant Stoechr & Sons, Inc.

Thirty-fourth. The said paper set forth in the bill of complaint herein as Exhibit 1 contains a recital that \$5,000 was paid by Stoechr & Sons, Inc., to Kammgarnspinnerei Stoechr & Company, but this defendant alleges that neither said sum of \$5,000 nor any other sum whatsoever was paid by Stoechr & Sons, Inc., to the said Kammgarn-

spinnerei Stoehr & Company, but that said sum of \$5,000 was merely credited on the books of Stoehr & Sons, Inc., to the Botany Worsted Mills, and that said sum of \$5,000 was credited on the books of the Botany Worsted Mills to the account of Kammgarnspinnerei Stoehr & Company and debited to the account of Stoehr & Sons, Inc., and that no money or other thing of value passed from Stoehr & Sons, Inc., to Kammgarnspinnerei Stoehr & Company. Upon information and belief this defendant alleges that the crediting of said \$5,000 and the other book-keeping entries regarding the same as set forth in this paragraph were procured and brought about through the domination and control of the Botany Worsted Mills by said Hans E. Stoehr and said Max W. Stoehr, as hereinabove set forth.

Thirty-fifth. On February 20, 1917, ten thousand (10,000) of said fourteen thousand nine hundred (14,900) shares, which had previously stood on the books of the Botany Worsted Mills in the name of Hans E. Stoehr, as Trustee for Kammgarnspinnerei Stoehr & Company, were transferred on the books of the Botany
68 Worsted Mills from his name as such trustee to the name of Stoehr & Sons, Inc. On the same day, to wit, February 20, 1917, the remaining four thousand nine hundred (4,900) of said fourteen thousand nine hundred (14,900) shares, which had previously stood upon the books of Botany Worsted Mills in the name of Max W. Stoehr as trustee for said Kammgarnspinnerei Stoehr & Company, were transferred on the books of the Botany Worsted Mills from his name as such trustee into the name of Stoehr & Sons, Inc. But this defendant alleges that there was no delivery of the certificates representing said 14,900 shares endorsed either in blank or to a specified person or persons appearing by the certificates to be the owner or owners of the shares of stock represented thereby from said Hans E. Stoehr and Max W. Stoehr, as Trustees, to Stoehr & Sons, Inc., and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and this defendant alleges that the title to said 14,900 shares of stock was not transferred to Stoehr & Sons, Inc., pursuant to the provisions of Chapter 191 of the Laws of 1916 of the State of New Jersey, said Act being entitled "An Act to make uniform the law of transfer of shares of stock in corporations," approved March 18, 1916.

Thirty-sixth. This defendant further alleges that said instrument of February 20, 1917, was not executed by Kammgarnspinnerei Stoehr & Company alleged to be one of the parties thereto; that the alleged signing of said instrument was not the act of Kammgarnspinnerei Stoehr & Company; that said instrument does not pur-
69 port to have been signed or executed by an officer or agent of Kammgarnspinnerei Stoehr & Company; that the said Kammgarnspinnerei Stoehr & Company never by any corporate act or otherwise authorized or ratified the execution of said instrument; and that said Kammgarnspinnerei Stoehr & Company had no notice or knowledge of the existence of said alleged instrument or of the

attempted transfer of its interest in said 14,900 shares of stock, and had no knowledge whatever concerning the same; but on the contrary, at the time of said attempted transfer of said interest, the relations between the United States of America and the then Empire of Germany had been broken off, and it was impossible and illegal for the complainant, or his brother Hans E. Stoehr, or any other person resident or domiciled in the United States to communicate with said Kammgarnspinnerei Stoehr & Company; that said instrument was in respect to the rights of said Kammgarnspinnerei Stoehr & Company in said 14,900 shares void and of no legal effect; that the Botany Worsted Mills and the officers and directors of said defendant Botany Worsted Mills were at the time of the attempted transfer of said 14,900 shares to Stoehr & Sons, Inc., dominated and controlled as hereinabove set forth by said Hans E. Stoehr and said Max W. Stoehr, and to carry out the illegal scheme of the parties to said alleged contract of February 20, 1917, the said Hans E. Stoehr and Max W. Stoehr caused an alleged transfer of said 14,900 shares of stock of the Botany Worsted Mills herein referred to to Stoehr & Sons, Inc., to be made upon the books of the Botany Worsted Mills; that said attempted transfer was ineffectual to transfer the

70 title of said 14,900 shares from the Kammgarnspinnerei Stoehr & Company to Stoehr & Sons, Inc., and was void ab initio and of no legal force and effect.

Thirty-seventh. This defendant alleges that from the 22nd day of October, 1917, until the 7th day of March, 1919, A. Mitchell Palmer was the Alien Property Custodian duly appointed by the President of the United States pursuant to the provisions of the Act of Congress of October 6, 1917, known as the "Trading with the enemy Act," and that as such Alien Property Custodian, from the 22nd day of October, 1917, to the 7th day of March, 1919, the said A. Mitchell Palmer was authorized to exercise all the powers conferred upon such official by said Act as amended and by the Presidential proclamations and executive orders issued pursuant thereto. On or about the 7th day of March, 1919, the said A. Mitchell Palmer duly resigned his office of Alien Property Custodian, and Francis P. Garvan was duly appointed Alien Property Custodian pursuant to the provisions of the "Trading with the enemy Act," has duly qualified as such Alien Property Custodian and he is authorized to exercise all the powers conferred upon such official by said Act as amended by the Presidential proclamation and executive orders issued pursuant thereto.

Thirty-eighth. On or about April 5, 1918, the Alien Property Custodian, after investigation having previously determined pursuant to the provisions of said "Trading with the Enemy Act" that said 14,900 shares of the capital stock of the Botany Worsted Mills was property belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy or an ally of enemy not holding a license granted by the President under said Act, duly demanded of the defendant Botany Worsted Mills that the

71 said 14,900 shares of stock should be transferred and delivered to

the Alien Property Custodian or his nominee and on the 24th day of February, 1919, he as such official seized said shares of stock and required the Botany Worsted Mills to cancel the certificates evidencing or representing said shares of stock and in lieu thereof to issue new certificates therefor in the name of A. Mitchell Palmer, Alien Property Custodian, and in so doing he expressly reserved all rights acquired under or by virtue of the requirement above mentioned. On or about the 22nd of April, 1918, said 14,900 shares of stock were duly transferred by the Botany Worsted Mills on the books of said Company to the People's Bank and Trust Company, of Passaic, New Jersey, as depository for the Alien Property Custodian and the Botany Worsted Mills did on or about the 25th day of February, 1919, in further compliance with said requirements of said official and of the Trading with the Enemy Act, cancel said certificates theretofore issued representing said 14,900 shares of stock and in lieu thereof did issue new certificates in the name of A. Mitchell Palmer, as Alien Property Custodian. On or about March 13, 1919, the Alien Property Custodian duly demanded from Stoehr & Sons, Inc., all the rights, privileges and benefits of Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, under the said contract between said Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, and Stoehr & Sons, Inc., dated February 20, 1917, and duly seized said rights, privileges and benefits, expressly reserving all rights accruing under or by virtue of any demands theretofore or thereafter made with respect to said 14,900 shares.

72 Thirty-ninth. The Alien Property Custodian, under the provisions of said "Trading with the Enemy Act," as amended, upon the determination of the enemy ownership of or interest in said 14,900 shares of stock as aforesaid, and upon the demand made therefor as aforesaid, and upon the seizure of the rights, privileges and benefits of the Kammgarnspinnerei Stoehr & Company as above set forth, succeeded to all the rights of Kammgarnspinnerei Stoehr & Company of Leipzig in respect to said instrument, including the right of the Kammgarnspinnerei Stoehr & Company to disaffirm, repudiate, abrogate and terminate said instrument and to set aside the alleged transfer of said 14,900 shares of stock into the name of Stoehr & Sons, Inc., claimed to have been made pursuant to the terms of said instrument, and in making said determination and demands did, as the successor under the provisions of the "Trading with the Enemy Act," as amended, to the interest and rights of Kammgarnspinnerei Stoehr & Company in said 14,900 shares, repudiate, disaffirm, abrogate and terminate said instrument and did duly and lawfully cause to be set aside the alleged transfer of said 14,900 shares of stock from Kammgarnspinnerei Stoehr & Company to Stoehr & Sons, Inc., and did cause said 14,900 shares to be duly and lawfully transferred on the books of the Botany Worsted Mills to the People's Bank and Trust Company as depository of the Alien Property Custodian as aforesaid and did seize said stock and caused the certificates therefor to be cancelled and new certificates to be issued in lieu thereof to A. Mitchell Palmer, as Alien Property Custodian.

73 None of the deferred instalments of the purchase price or any part thereof was paid when due or at any other time. At the time of the making of each of the demands and seizure hereinabove in paragraphs thirty-eighth and thirty-ninth mentioned the said Stoechr & Sons, Inc., was in default as aforesaid, and the intent, purpose and legal effect of said demands and of each of them was to determine that said Stoechr & Sons, Inc., had no right, title or interest in said 14,900 shares of stock, and to exclude said Stoechr & Sons, Inc., from the enjoyment of any right, title or interest therein, as the said demands were effective to the end aforesaid, whether the right so to do arose from such default or otherwise.

As a third, separate and distinct defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the court:

Fortieth. This defendant repeats and realleges the allegations contained in paragraphs twenty-fifth to thirty-ninth inclusive of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Forty-first. Defendant further alleges that the said instrument, Plaintiff's Exhibit 1, was absolutely void and of no effect for
74 the reason that said instrument purports to be signed on behalf of Kammgarnspinnerei Stoechr & Company by Hans E. Stoechr, and that the said Hans E. Stoechr was at the time of the alleged execution of said instrument the president and a director of and one of the chief stockholders of Stoechr & Sons, Inc., the other party to said alleged instrument; that the attempted transfer by said instrument of the interest in said 14,900 shares of stock by the said Hans E. Stoechr and said Max W. Stoechr, who at that time stood in a fiduciary relation to the said Kammgarnspinnerei Stoechr & Company, was void and of no effect as against public policy and the rights of the beneficiary, said Kammgarnspinnerei Stoechr & Company, and of the Alien Property Custodian as successor to such beneficiary, Kammgarnspinnerei Stoechr & Company, for the reason that it was in effect an attempted transfer of the property of the principal by the fiduciaries to or for the benefit of the fiduciaries themselves as the holders or beneficial owners of stock in Stoechr & Sons, Inc., that such an attempted transfer by such trustees or fiduciaries of said 14,900 shares to Stoechr & Sons, Inc., the corporation in which they were personally interested, was and is absolutely invalid and void as against public policy; and that it was and is immaterial whether the said alleged contract or the attempted transfer of said interest thereunder was fair or for the benefit of said Kammgarnspinnerei Stoechr & Company or otherwise.

Forty-second. The Alien Property Custodian under the provisions of said "Trading with the Enemy Act," upon the determination of the enemy ownership of or interest in said 14,900 shares of
75 stock as aforesaid, and upon demand made therefor as aforesaid, and seizure thereof as aforesaid, and upon the seizure of the rights, privileges and benefits of the Kammgarn-

spinnerei Stoehr & Co. as above set forth, succeeded to the rights of the Kammgarnspinnerei Stoehr & Company of Leipzig, in respect to the title and ownership of said 14,900 shares, and also in respect to said instrument, Plaintiff's Exhibit 1, including the right of the Kammgarnspinnerei Stoehr & Company to disaffirm and repudiate said instrument and to set aside the alleged transfer of the interest in said 14,900 shares of stock into the name of Stoehr & Sons, Inc., claimed to have been made pursuant to the terms of said instrument, and this defendant became vested with all the rights, interests and powers of said Kammgarnspinnerei Stoehr & Company in or with respect to said 14,900 shares of stock and said alleged instrument, Plaintiff's Exhibit 1, and in making the aforesaid determination and demands and seizure did, as the successor, under the provisions of the "Trading with the Enemy Act," to the rights and interests of Kammgarnspinnerei Stoehr & Company in said 14,900 shares and with respect to said alleged contract, repudiate and disaffirm said contract, and did duly and legally cause said 14,900 shares of stock to be transferred on the books of the Botany Worsted Mills from the name of Stoehr & Sons, Inc., to People's Bank and Trust Company of Passaic, New Jersey, as depository for the Alien Property Custodian as aforesaid, and did seize said stock and caused the certificates therefor to be cancelled and new certificates to be issued in lieu thereof to A. Mitchell Palmer, as Alien Property Custodian.

76 As a fourth, separate and distinct and partial defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the court:

Forty-third. Prior to February 15, 1915, Kammgarnspinnerei Stoehr & Company, Aktiengesellschaft, of Plagwitz, Leipzig, Germany, a corporation organized under the laws of the then Empire of Germany, was the owner in fact and of record on the books of the Botany Worsted Mills of 14,900 shares of the capital stock of the Botany Worsted Mills.

Forty-fourth. On or about February 15, 1915, there was transferred 10,000 of said 14,900 shares on the books of the Botany Worsted Mills to Hans E. Stoehr, as trustee for said Kammgarnspinnerei Stoehr & Company; and on or about February 26, 1915, there was transferred the remaining 4,900 of said shares on the books of the Botany Worsted Mills to Max W. Stoehr, as Trustee for Kammgarnspinnerei Stoehr & Company.

Forty-fifth. On or about February 16, 1917, there was filed in the office of the Secretary of State of New York, a certificate of incorporation of Stoehr & Sons, Inc., with an authorized capital stock of \$250,000 consisting of 2,500 shares of the par value of \$100 each.

77 Forty-sixth. On or about February 20, 1917, an instrument was signed in the name of Kammgarnspinnerei Stoehr & Company by Hans E. Stoehr and in the name of Stoehr & Sons, Inc., by George G. Rohlig, Vice-President, a copy of which instru-

ment is annexed to the complaint and marked Complainant's Exhibit 1; that the subject matter of said instrument was said 14,900 shares of stock.

Forty-seventh. Said 14,900 shares were on or about February 20, 1917, transferred on the books of the Botany Worsted Mills from the names of Hans E. Stoechr, Trustee as aforesaid, and Max W. Stoechr, Trustee as aforesaid, respectively, to the name of Stoechr & Sons, Inc.

Forty-eighth. On or about April 5, 1918, the Alien Property Custodian, having duly and lawfully and in accordance with the provisions of the "Trading with the Enemy Act," and in particular with the provisions of Section 7, sub-section (c) of said Act, after investigation determined that said 14,900 shares of stock of Botany Worsted Mills, hereinabove referred to, belonged to or were held for, by, or on account of, or on behalf of or for the benefit of an enemy or ally of enemy not holding a license granted by the President under said "Trading with the Enemy Act," duly demanded that the Botany Worsted Mills transfer to the Alien Property Custodian said 14,900 shares of stock. Said 14,900 shares of stock were thereafter and on or about the 22nd of April, 1918, duly transferred on the books of the Botany Worsted Mills to Peoples Bank and Trust Company, of Passaic, New Jersey, as depositary
78 for the Alien Property Custodian. Said 14,900 shares stood of record on the books of the Botany Worsted Mills in the name of Peoples Bank and Trust Company, as depositary for the Alien Property Custodian until the 25th day of February, 1919.

Forty-ninth. On the declaration that a state of war existed between the United States of America and the then Empire of Germany all obligations and contractual relations between citizens of the United States of America and of the Empire of Germany were dissolved and abrogated and to carry out during the war any part of such a contract would involve intercourse with the enemy and would be illegal and upon the declaration of war as aforesaid, the same was dissolved and became void and was abrogated.

Fiftieth. If any contract or agreement existed between Kammgarnspinner-i Stoechr & Company and Stoechr & Sons, Inc., respecting said 14,900 shares of stock, the recognition by the United States of America on April 6, 1917, of the existence of a state of war between the United States of America and the then Empire of Germany dissolved said contract between said parties, for the reason that any performance of said contract or the continuance of said contract would involve trading or intercourse with the enemy and said contract upon the declaration of war as aforesaid became illegal and void and was abrogated.

79 For a fifth, separate and distinct and partial defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the court:

Fifty-first. Prior to February 19, 1917, the complainant, Max W. Stocher, Eduard Stocher, who was the father of the complainant and who was a German subject residing in Germany, Hans E. Stocher, who was a brother of the complainant and who was a German subject and Georg Stocher, who was a brother of the complainant and who was a German subject residing in Germany, were co-partners engaged in business under the firm name and style of Stocher & Sons, the principal place of business of said co-partnership being in New York City, New York. Said Eduard Stocher and Georg Stocher continued thereafter to reside in Germany up to, including and subsequent to April 6, 1917, when United States of America recognized that state of war existed between the United States and the then Empire of Germany.

Fifty-second. Said Stocher & Sons were prior to February 19, 1917, the owners among other assets of 5690 shares of the capital stock of the Botany Worsted Mills.

Fifty-third. On or about February 16, 1917, there was filed in the office of the Secretary of State of the State of New York, a certificate of incorporation of a corporation Stocher & Sons, Inc., so with a capital stock of \$250,000 consisting of 2500 shares of the par value of \$100 each.

Fifty-four. On February 19, 1917, there was signed by the name of Stocher & Sons an instrument purporting to be a bill of sale of all its business, property, good will, firm name and all other assets to Stocher & Sons, Inc., which included said 5690 shares of the capital stock of the Botany Worsted Mills, which said 5690 shares of stock were thereafter transferred upon the books of the Botany Worsted Mills into the name of Stocher & Sons, Inc. The pretended consideration for said transfer of property and assets was the issuance of the entire capital stock of \$250,000 of Stocher & Sons, Inc., to or for the benefit of the former partners of Stocher & Sons in the proportions of their respective partnership interests in said firm, and the assumption by Stocher & Sons, Inc., of the debts and obligations of the partnership Stocher & Sons.

Fifty-fifth. Said stock of Stocher & Sons, Inc., was on February 19, 1917, issued as follows:

Name of stockholder.	Number of shares.
Max W. Stocher	1875
Hans E. Stocher	357.14
Max W. Stocher	223.21
Max W. Stocher	44.65

The said 1875 shares and the said 223.21 shares so issued to Max W. Stocher were issued to him as Trustee for said Eduard Stocher and said Georg Stocher respectively.

Fifty-sixth. On February 19, 1917, an instrument was signed purporting to be a voting trust agreement between said Hans E. Stoehr and said Max W. Stoehr as the stockholders of Stoehr & Sons, Inc., as parties of the first part, and said Hans E. Stoehr, said Max W. Stoehr and one Georg Rohlig, as voting trustees, as parties of the second part. Said instrument provided for the transfer and delivery of the certificates by the stockholders to the voting trustees, and that the stockholders should receive in exchange therefor trust receipts as provided in said instrument; the alleged voting trust was to continue for a period of five years from the date of said agreement, that is, until February 19, 1922; the persons named in said instrument as voting trustees were authorized to cause the stock certificates so deposited to be transferred upon the books of Stoehr & Sons, Inc., in the names of said persons as voting trustees; and the said persons as such voting trustees were to possess and be entitled to exercise all rights of every name and nature, including the right to vote, in respect to any and all such shares deposited. The holders of the trust certificates to be issued by the said persons as such voting trustees as provided in the said instrument were to be entitled to receive payments equal to the dividends, if any, collected by said persons as voting trustees upon the shares of stock of the said Company standing in their name. The said persons as voting trustees agreed to issue certificates for the number of shares transferred and delivered to them in the form set forth in Exhibit A of said instrument. Said instrument provided that at the expiration of said five years' period, to wit, after February 19, 1922, and within ten days after demand, the said persons named as voting trustees therein were upon the surrender of said trust receipts or certificates then outstanding to exchange the same for and to deliver to the then holders of said trust receipts or certificates proper certificates of the equivalent kind and amount of the common stock of said Company.

Fifty-seventh. An instrument purporting to be a voting trust certificate was thereupon issued to Max W. Stoehr as Trustee for Eduard Stoehr for 1875 shares of the stock of Stoehr & Sons, Inc., and a further instrument purporting to be a voting trust certificate was issued to Max W. Stoehr as Trustee for Georg Stoehr for 223.24 shares of the stock of Stoehr & Sons, Inc.

Fifty-eighth. On April 6, 1917, the United States of America declared that a state of war existed between the United States of America and the then Empire of Germany, and said state of war continued thereafter and has continued up to the present time, and will continue until the date of the proclamation of the exchange of ratifications of the treaties of peace, unless the President of the United States shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the end of the war.

Fifty-ninth. On or about March 8th, 1918, the Alien Property Custodian, having duly and lawfully and in accordance with the provisions of the Trading with the Enemy Act, as amended, and in

particular with the provisions of Section 7, sub-section (c) of said Act, after investigation determined that said voting trust certificate for 1875 shares of the stock of Stoehr & Sons, Inc., standing in the name of Max W. Stoehr, as Trustee for said Eduard Stoehr, and said voting trust certificate for 223.21 shares of the stock of

83 Stoehr & Sons, Inc., standing in the name of said Max W. Stoehr, as trustee for said Georg Stoehr, belonged to or were held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President under the said Trading with the Enemy Act, duly demanded said voting trust certificates and the same were thereupon duly delivered to Passaic Trust & Safe Deposit Company, of Passaic, New Jersey, as depository for the Alien Property Custodian, and on the 28th day of March, 1919, the Alien Property Custodian seized said voting trust certificates and required the complainant to cancel both of said voting trust certificates and in lieu thereof to issue new voting trust certificates in the name of Francis P. Garvan as Alien Property Custodian, and in so doing he expressly reserved all rights acquired under or by virtue of the requirement above mentioned.

Sixtieth. The performance of the alleged contract between Stoehr & Sons and Stoehr & Sons, Inc., contemplated the delivery by Stoehr & Sons to Stoehr & Sons, Inc., of 5,690 shares of the stock of the Rotany Worsted Mills. Forty-four hundred shares of said 5,690 shares of said stock were represented by certificates which were at the time of the execution of said bill of sale in Germany. On the declaration that a state of war existed between the United States of America and the then Empire of Germany all obligations and contractual relations between the citizens of the United States and of the Empire of Germany were dissolved and abrogated and to carry out during the war any part of said alleged instrument between Stoehr & Sons and Stoehr & Sons, Inc., or any part of said instrument purporting to be a voting trust agreement

84 as above set forth, would involve intercourse with the enemy and would be illegal and upon the declaration of war as aforesaid the same was dissolved and became void and abrogated.

If any contract or agreement existed between Stoehr & Sons and Stoehr & Sons, Inc., or if any voting trust agreement existed between the stockholders of Stoehr & Sons, Inc., and the persons named in the instrument above set forth as voting trustees, the recognition by the United States of America on April 6, 1917, of the existence of a state of war between the United States of America and the then Empire of Germany dissolved the said alleged contract between Stoehr & Sons and Stoehr & Sons, Inc., and the said alleged voting trust agreement, for the reason that the performance of said alleged agreements involved trading or intercourse with the enemy as above set forth, and for the further reason that said alleged agreements upon the declaration of war as aforesaid became illegal and void as against public policy.

For a sixth, separate and distinct defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the Court:

Sixty-first. Defendant repeats and realleges the allegations contained in paragraphs twenty-fifth to thirty-ninth inclusive of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Sixty-second. This defendant further alleges with respect to said alleged contract for the purchase of said 14,900 shares by Stöhr & Sons, Inc., from Kammgarnspinnerei Stöhr & Company of Leipzig, that it was not intended to transfer the ownership of the stock of the Botany Worsted Mills to Stöhr & Sons, Inc., but it was the intention of the parties to the said alleged contract to affect merely the control of the defendant Botany Worsted Mills as between its stockholders and that the said contract had no reference to the status of such control so far as the Alien Property Custodian was concerned; that the parties to said alleged contract admitted that the control of the Botany Worsted Mills might be imperilled by a state of war between the United States of America and the then Empire of Germany because the voting right on stock of alien enemies or in which alien enemies had the beneficial interests was doubtful under the decisions of the courts, and if said Kammgarnspinnerei Stöhr & Company were deprived of said voting rights the control of the Botany Worsted Mills might be lost to such alien enemies; and that it was not the intention of the said parties that the status of such shares as far as the rights of the Government of the United States were concerned should be in anywise affected whether such shares were in Kammgarnspinnerei Stöhr & Company or in the defendant Stöhr & Sons, Inc.

86 As a seventh, separate and distinct defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the Court:

Sixty-third. Defendant repeats and realleges the allegations contained in paragraphs twenty-fifth to thirty-ninth inclusive of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Sixty-fourth. The said 14,900 shares of the capital stock of the Botany Worsted Mills hereinabove referred to, which constituted the subject matter of said instrument, Plaintiff's Exhibit 1, stood of record on the books of the Botany Worsted Mills in the name of said Kammgarnspinnerei Stöhr & Company in the year 1914 and had so stood in the name of said Company for a long time prior thereto; that in the month of February, 1915, there was delivered to the Botany Worsted Mills a letter purporting to be signed by Georg Stöhr, Vice-president of the Botany Worsted Mills, and addressed to the Treasurer of the Botany Worsted Mills at Passaic,

New Jersey, and purporting to be dated at Leipzig, Plagwitz, January 15, 1915. Said letter purported to certify that certificates representing 10,000 shares of the said 14,900 shares of the stock of the Botany Worsted Mills as aforesaid had been deposited with said Georg Stoehr, as such Vice-president, endorsed to Hans E. Stoehr, as Trustee, with the request to cause the same to be transferred

87 upon the books of said Company to the above named endorsee Hans E. Stoehr as Trustee. Said 10,000 shares were on the 15th of February, 1915, recorded on the books of the Botany Worsted Mills as having been transferred to Hans E. Stoehr as Trustee by the deposit of the certificates therefor representing the same with said Georg Stoehr as such Vice-president, at Leipzig, Germany. With reference to 4,900 shares of said 14,900 shares, the Botany Worsted Mills received a letter purporting to be signed by said Georg Stoehr, as such Vice-president, addressed to the Treasurer of the Botany Worsted Mills at Passaic, New Jersey, and purporting to be dated at Plagwitz, Leipzig, February 1, 1915. Said letter purported to certify that certificates representing said 4,900 shares had been deposited with said Georg Stoehr, as such Vice-president of the Botany Worsted Mills, endorsed to Max W. Stoehr as Trustee, with the request to cause the same to be transferred upon the books of the Company to the above named endorsee, said Max W. Stoehr as Trustee. Said 4,900 shares were on February 26, 1915, recorded on the books of the Botany Worsted Mills as having been transferred to Max W. Stoehr, as Trustee, by deposit of certificates with said Georg Stoehr, Vice-president, at Leipzig, Germany. At the time of the said alleged transfers of said 14,900 shares of stock of the Botany Worsted Mills, the said Botany Worsted Mills and the officers and directors thereof were dominated and controlled by said Hans E. Stoehr and the complainant, Max W. Stoehr, and said alleged transfers were made by the officers of said Company under the domination and control of said Hans E. Stoehr and Max W. Stoehr as aforesaid, pursuant to the scheme and conspiracy hereinafter set forth.

88 Sixty-fifth. This defendant alleges that at the time of the alleged transfer on February 20, 1917, of said 14,900 shares of said Hans E. Stoehr and said Max W. Stoehr respectively from their names as trustees to the name of Stoehr & Sons, Inc., as hereinabove set forth there was no delivery of the certificates representing said 10,000 and 4,900 shares of the stock of the Botany Worsted Mills endorsed either in blank or to specified person or persons appearing by the certificates to be the owner or owners of the shares of stock represented thereby from Hans E. Stoehr and Max W. Stoehr as Trustees to Botany Worsted Mills, and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and that the title to said 14,900 shares of stock attempted to be transferred by said Hans E. Stoehr and said Max W. Stoehr respectively from their names as trustees

to the same of Stoehr & Sons, Inc., as hereinbefore set forth, was not duly transferred to Stoehr & Sons, Inc., pursuant to the provisions of Chapter 191 of the Laws of 1916 of the State of New Jersey, said Act being entitled "An Act to make uniform the law of transfer of shares of stock in corporations," approved March 18, 1916.

Sixty-sixth. On February 3, 1917, diplomatic relations between the United States of America and the then Empire of Germany were severed and a state of war between said nations was then imminent and the likelihood of the commencement of said war was of common knowledge both in the United States of America and in the
89 then Empire of Germany. At the time of the execution of the said instrument of attempted transfer dated February 20, 1917, the Republic of France, the United Kingdom of Great Britain and Ireland, the Dominion of Canada, the Commonwealth of Australia and the then Empire of Germany each had exercised their sovereign right to capture enemy property on land, and this fact was well known to those who participated in the attempted execution of said instrument of February 20, 1917. It was likewise well known that in the anticipated event of the entry of the United States of America in said European war it would exercise its sovereign right to capture enemy property. Defendant alleges that the said incorporation of Stoehr & Sons, Inc., the attempted transfer of the assets of the partnership of Stoehr & Sons to Stoehr & Sons, Inc., the signing of the alleged agreement of February 20, 1917, and the attempted transfer of the said 14,900 shares of stock from the names of said Hans E. Stoehr and Max W. Stoehr as Trustees for the said Kammgarnspinnerei Stoehr & Company into the name of Stoehr & Sons, Inc., and all of the other acts and proceedings in relation to the transfer of said partnership assets and to the attempted transfer of the title or interest of Kammgarnspinnerei Stoehr & Company in said 14,900 shares hereinabove set forth, and the attempted subjection of the stock of Stoehr & Sons, Inc., to a voting trust to run for a period of five years, the voting trustees being said Max W. Stoehr, said Hans E. Stoehr and one Georg Rohling who was associated with and whose acts were dominated and controlled by the said Stoehrs, were acts done with the intent and purpose of the parties thereto to defeat the belligerent rights of the United States
90 of America, and were done and carried out in an attempt to thwart the United States of America in the exercise of its sovereign power to capture enemy property on land as well as at sea, and were all part of a conspiracy on the part of the parties thereto to defeat the belligerent rights of the United States of America as aforesaid and to prevent the United States of America from exercising its sovereign right to capture enemy property on land as well as at sea as aforesaid; and that said acts as aforesaid done or attempted to be done under said conspiracy and with said unlawful intent were contrary to public policy and were illegal and absolutely void.

Sixty-seventh. Defendant further alleges that the said acts of the complainant, Max W. Stoehr, and his brother Hans E. Stoehr who

were members of the partnership Stoehr & Sons; the instrument attempting to bind said the Kammgarnspinnerei Stoehr & Company, including the said alleged attempted transfers of said 14,900 shares of stock; the incorporation of Stoehr & Sons, Inc., the alleged transfer of the assets of the partnership Stoehr & Sons to Stoehr & Sons, Inc.; the alleged execution of the instrument of February 20, 1917, the attempted subjection of the stock of Stoehr & Sons, Inc., to a voting trust to run for a period of five years, the voting trustees being said Max W. Stoehr, said Hans E. Stoehr and one Georg Rohlig, who was associated with and whose acts were dominated and controlled by the said Stoehrs, were all part of a scheme and conspiracy to distort and hide the truth and cover up the transactions in regard to the assets of said partnership and in regard to the ownership of said 14,900 shares of stock of the Botany Worsted Mills; that the said incorporation of Stoehr & Sons, Inc., was a mere cloak and

91 shelter behind which the parties attempted to conceal the real ownership of the property above referred to in fraud of the rights of the United States as aforesaid; that the said corporation of Stoehr & Sons, Inc., was a mere tool of the complainant herein and his associates who were members of the partnership of Stoehr & Sons, and that the corporation was in fact the said persons, to wit, Max W. Stoehr, the complainant herein, and the other partners in the said partnership Stoehr & Sons; that the difference between the legal personality of the said persons and the said corporation of Stoehr & Sons, Inc., gave the corporation no greater rights than the said persons then had, and the said difference in legal personality could not and cannot be used to enable the corporation Stoehr & Sons, Inc., to become a means of fraud and a means to evade the legal responsibility and legal accountability of said persons, and cannot and could not be used as a cloak or cover to defeat the right of the United States of America to capture enemy property on land or to defeat the rights of the Alien Property Custodian to demand and receive the delivery of property held by, for, or on account of persons who are alien enemies. Looking beyond the formal corporate differences between said parties and said corporation and to the real and substantial rights rather than mere corporate organization, the ownership of said 14,900 shares of stock of the Botany Worsted Mills and the ownership of the assets of said partnership of Stoehr & Sons remained the same as it was prior to said attempted transfer by Stoehr & Sons, the partnership, to Stoehr & Sons, Inc., and the attempted transfer of the interest in said 14,900 shares from

92 Kammgarnspinnerei Stoehr & Company to Stoehr & Sons, Inc.

Sixty-eighth. The complainant has participated in an unconscionable plan or scheme to place property which would be subject to the right of confiscation by the United States in the event of war between the United States and the German Empire in the apparent situation of being entitled to protection by his Government rather than subject to confiscation.

This suit is based upon an alleged contract made as a part of and in furtherance of the said plan and this plaintiff is now asking this court to give effect to such plan and purpose.

As an eighth, separate and distinct and partial defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the court:

Sixty-ninth. Defendant repeats and realleges the allegations contained in paragraphs twenty-fifth to thirty-ninth inclusive of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Seventieth. Prior to the commencement of this suit, the Alien Property Custodian, after due investigation, duly determined
93 that the said 14,900 shares of the capital stock of the Botany Worsted Mills belonged to or were held for, on account of, or for the benefit of the Kammgarnspinnerei Stoehr & Co., which, after due investigation, he duly determined to be an enemy not holding a license granted by the President, and did require that said 14,900 shares of the capital stock of the Botany Worsted Mills be conveyed, transferred, assigned, delivered and paid over to the Alien Property Custodian, to be by him held, administered and accounted for as provided by law. This defendant further alleges that prior to the commencement of this suit the Alien Property Custodian, after due investigation, duly determined that 9510 other shares of the capital stock of the Botany Worsted Mills, other than said 14,900 shares above referred to, belonged to, or were held for, or on account of persons whom the Alien Property Custodian, determined to be enemies not holding a license granted by the President, and required that said 9510 shares of said capital stock of the Botany Worsted Mills be conveyed, transferred, assigned, delivered and paid over to the Alien Property Custodian, to be by him held, administered and accounted for as provided by law. Said 14,900 shares and said 9510 other shares above referred to, making a total of 24,410 shares, were thereupon duly transferred on the books of the Botany Worsted Mills to the Alien Property Custodian, or to his nominee, and said 24,410 shares were all the shares that the Alien Property Custodian has so demanded and so taken over.

Seventy-first. The Alien Property Custodian, prior to the commencement of this action, pursuant to the provisions of the Trading
94 with the Enemy Act, as amended, and pursuant to the executive orders and presidential proclamations issued thereunder, duly and lawfully advertised to be sold at public auction said 24,410 shares of the stock of the Botany Worsted Mills.

Seventy-second. Upon information and belief, this defendant alleges that Stoehr & Sons, Inc., is the holder of record on the books of the Botany Worsted Mills of 5,690 shares of the capital

stock of the Botany Worsted Mills, but that said 5,690 shares were and are not a part of said 24,410 shares so advertised to be sold by the Alien Property Custodian as aforesaid, nor is any part of said 5,690 shares included in said 24,410 shares advertised as aforesaid.

Seventy-third. Defendant further alleges that the board of directors of Stoehr & Sons, Inc., by means of a resolution duly adopted at a regular meeting of the said board of directors, voluntarily determined to join with the Alien Property Custodian in the said public sale as aforesaid, by offering for public sale at the time and place advertised by the Alien Property Custodian for the sale of said 24,410 shares and upon the terms and conditions of sale as promulgated by the Alien Property Custodian in connection with said sale, 1,290 shares out of the total of \$5,690 shares standing of record on the books of the Botany Worsted Mills in the name of Stoehr & Sons, Inc., as aforesaid. Pursuant to said resolution of the board of directors, said Stoehr & Sons, Inc., joined in the advertisement and offer for sale said 1,290 shares of stock of the Botany Worsted Mills at public auction at the same time and place and subject to the same terms and conditions of sale as was advertised by the Alien

95-98 Property Custodian for the sale of said 24,410 shares, so that the Alien Property Custodian and said Stoehr & Sons, Inc., jointly offered for public sale 25,700 shares of the stock of the Botany Worsted Mills. Except as aforesaid, neither said Stoehr & Sons, Inc., nor the Alien Property Custodian has offered for sale or has taken any steps towards selling or offering for sale the said 5,690 shares of the capital stock of Botany Worsted Mills standing in the name of Stoehr & Sons, Inc., on the books of the Botany Worsted Mills.

Wherefore this defendant prays that the injunction and other relief demanded in the bill of complaint herein be denied and that said bill of complaint be dismissed, with the costs and disbursements of this suit.

FRANCIS G. CAFFEY,

Solicitor for Defendant

A. Mitchell Palmer Individually,

U. S. Court and Post-Office Building,

New York City.

GEORGE L. INGRAHAM,

LEE C. BRADLEY,

Of Counsel.

99 SIR:

Please take notice that the within is a copy of the answer of the defendant, A. Mitchell Palmer, individually, which was this day filed in the office of the Clerk of the District Court of the United

States for the Southern District of New York, at the United States Court, in the Post Office Building, New York City.

Dated, New York, May 26, 1919.

Yours, etc.,

FRANCIS G. CAFFEY,
Solicitor for Defendant
A. Mitchell Palmer Individually,
Post Office Building,
New York City.

To Valentine Taylor, Esq.,
Solicitor for Complainant,
52 Wall Street,
New York City.

Service of the within answer and notice of filing is hereby admitted this 26th day of May, 1919.

Solicitor for Complainant.

[Endorsed:] A Copy this day received. May 26, 1919. House, Grossman & Vorhaus, by ———, Atty. for —. Entd. by W. Refd. to F. H.

100 District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Answer of Francis P. Garvan as Alien Property Custodian.

Francis G. Caffey, Solicitor for defendant, Francis P. Garvan, as Alien Property Custodian, U. S. Court and Post Office Building, New York City.

George L. Ingraham, Lee C. Bradley, of Counsel.

U. S. District Court, S. D. of N. Y. Filed May 26, 1919.

101 District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

Now comes the above named defendant, Francis P. Garvan, as Alien Property Custodian, and answering the bill of complaint and supplemental bill exhibited in this cause says:

102 First. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph first of the bill that Max W. Stoehr is and ever since 1910 has been a citizen of the United States and of the State of New York and an actual resident in the City and County of New York, in said State; and that the defendant Stoehr & Sons, Inc., is and ever since February 17, 1917, has been a corporation duly organized by and under the laws of the State of New York.

The said defendant admits the other allegations of paragraph first of the bill.

Second. This defendant denies the allegations of paragraph second of the bill.

Third. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph third of the bill.

Fourth. This defendant admits the allegations of paragraph fourth of the bill.

Fifth. This defendant admits the allegations of paragraph fifth of the bill.

Sixth. This defendant denies the allegations of paragraph sixth of the bill.

Seventh. This defendant denies the allegations of paragraph seventh of the bill, except that he admits that prior to February, 1915, 14,900 shares of the capital stock of the Botany Worsted Mills stood on the books of said Botany Worsted Mills in the name of

103 Kammgarnspinnerei Stoehr & Company, Aktiengesellschaft; and that on or about February 15, 1915, ten thousand (10,-

000) of said 14,900 shares of said stock were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoechr & Company, Aktiengesellschaft, into the name of Hans E. Stoechr, as Trustee; and that on or about February 26, 1915, the remaining 4,900 shares of said 14,900 shares were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoechr & Company, Aktiengesellschaft, into the name of Max W. Stoechr, as Trustee.

Eighth. This defendant denies the allegations of paragraph eighth of the bill.

Ninth. This defendant denies the allegations of paragraph ninth of the bill, except that he admits that on April 6, 1917, and December 7, 1917, respectively, the United States of America recognized that a state of war existed between the United States and the then Empire of Germany and the then Empire of Austria-Hungary, and except also that he admits that an armistice was signed on November 11, 1918.

Tenth. This defendant denies the allegations of paragraph tenth of the bill.

Eleventh. This defendant denies the allegations of paragraph eleventh of the bill.

Twelfth. This defendant denies the allegations of paragraph twelfth of the bill.

104 Thirteenth. This defendant denies the allegations of paragraph thirteenth of the bill.

Fourteenth. This defendant admits that on or about the 20th of March, 1918, the defendants Botany Worsted Mills and Stoechr & Sons, Inc., were and now are solvent, and that the said Botany Worsted Mills had a large surplus and reserve fund.

This defendant denies each and all of the other allegations of paragraph fourteenth of the bill.

Fifteenth. This defendant admits that the terms and conditions of sale of the stock of the Botany Worsted Mills advertised by the Alien Property Custodian to be sold are substantially alleged in paragraph fifteenth of the bill.

This defendant denies each and all of the other allegations and conclusions of paragraph fifteenth of the bill.

Sixteenth. This defendant denies the allegations of paragraph sixteenth of the bill.

Seventeenth. This defendant denies the allegations of paragraph seventeenth of the bill.

Eighteenth. This defendant admits that on or about November 29, 1918, there was filed in the office of the Alien Property Custodian an instrument purporting to be a notice of claim under oath under

Section 9 of the "Trading with the Enemy Act" by Max W. Stoehr, and that a copy of said instrument is annexed to the bill of complaint in this cause marked Exhibit III.

This defendant denies each and all of the other allegations of paragraph eighteenth of the bill.

105 Nineteenth. This defendant denies the allegations of fact and conclusions of paragraph nineteenth of the bill.

Twentieth. This defendant denies the allegations of fact and conclusions of paragraph twentieth of the bill.

Twenty-first. This defendant denies the allegations of paragraph first of the supplemental bill, purporting to be sworn to December 12, 1918, except that he admits that on or about December 12, 1918, a notice was filed with the Alien Property Custodian substantially in the form annexed to the supplemental bill and marked "Complainant's Supplemental Bill, Exhibit No. 1."

Twenty-second. This defendant denies the allegations of paragraph second of the supplemental bill.

Twenty-third. This defendant denies the allegations of paragraph third of the supplemental bill.

As a first, separate and distinct defense to the bill of complaint of the complainant herein, this defendant further alleges and shows to the court:

Twenty-fourth. The complainant is not a person claiming any interest, right or title in any money or other property which
103 has been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian pursuant to the provisions of the "Trading with the Enemy Act," as amended, so as to entitle the complainant to the benefit of the provisions of Section 9 of the "Trading with the Enemy Act," as amended; that the complainant is not a claimant within the meaning of said Section 9 of the "Trading with the Enemy Act," and was and is not entitled to make or file with the Alien Property Custodian a notice of his claim, under oath, or to institute a suit in equity in this Court to establish the interest, right, title or debt claimed to be due, that the plaintiff is not a person claiming any interest, right or title to the stock of the Botany Worsted Mills described in the complaint, and that therefore this Court is without jurisdiction to grant the relief prayed for in the bill herein.

For a second, separate and distinct defense to the bill of complaint of the complainant herein, the said defendant further alleges and shows to the court:

Twenty-fifth. Prior to February 15, 1915, Kammgarnspinnerei Stoehr & Co., Aktiengesellschaft of Plagwitz, Leipzig, Germany, which Company as this defendant is informed and believes was and

is a corporation organized under the laws of the then Empire of Germany, was the owner of record on the books of the Botany
 107 Worsted Mills, a corporation organized under the laws of the State of New Jersey, of 14,900 shares of the capital stock of the Botany Worsted Mills. On or about the 15th of February, 1915, there was transferred on the books of the Botany Worsted Mills 10,000 shares of the said 14,900 shares to Hans E. Stoechr as Trustee for said Kammgarnspinnerei Stoechr & Company. On or about February 23, 1915, there was transferred on the books of the Botany Worsted Mills the remaining 4,900 of said shares to Max W. Stoechr as Trustee for said Kammgarnspinnerei Stoechr & Company.

Twenty-sixth. Prior to February 19, 1917, the complainant Max W. Stoechr, Eduard Stoechr, who was the father of the complainant and who was a German subject residing in Germany, Hans E. Stoechr, who was a brother of the complainant and who was a German subject, and Georg Stoechr who was a brother of the complainant and who was a German subject residing in Germany, were partners engaged in business under the firm name and style of Stoechr & Sons. The principal place of business of said partnership was in New York City, New York.

Twenty-seventh. The purposes of said co-partnership of Stoechr & Sons as stated in the agreement of copartnership among the said partners were to do a general mercantile and commission business; to engage in the purchase, lease or sale of real or other property, including the purchase and sale of shares of stock and other securities as well as of goods and merchandise; to participate in industrial enterprises; to purchase, lease and sell and be interested in textile
 108 and other factories, and to dispose of the output of such factories; and in general to promote the interests of the partners and of their families by consolidating various property interests and to manage such property interests through the said copartnership.

Twenty-eighth. The capital of said copartnership of Stoechr & Sons as stated in said copartnership agreement was the sum of \$560,000 contributed by the various partners as follows:

Eduard Stoechr a German citizen residing in Germany..	\$420,000
Hans E. Stoechr a German citizen.....	80,000
Georg Stoechr a German citizen residing in Germany....	50,000
Max W. Stoechr the complainant herein.....	10,000
Total	<u>\$560,000</u>

Twenty-ninth. On or about February 16, 1917, there was filed in the office of the Secretary of State of New York, a certificate of incorporation of a corporation Stoechr & Sons, Inc., with an authorized capital stock of \$250,000 consisting of 2,500 shares of the par value of \$100 each. Its principal purposes as stated in the certificate of incorporation were to deal in textile products, cloth and raw material and stocks and bonds. The minutes of the first meeting of its board

of directors, held February 19, 1917, contain a resolution authorizing the issuance of the entire stock of the Company for the business, property, good will, firm name and other assets of Stoehr & Sons, the partnership above referred to, upon the assumption by Stoehr & Sons, Inc., of all the liabilities of the said partnership. The stock of said Stoehr & Sons, Inc., was issued on February 19, 1917, as follows:

Stockholder.	Number of shares.
Max W. Stoehr.....	1,875.
Hans E. Stoehr.....	357.14
Max W. Stoehr.....	223.21
Max W. Stoehr.....	44.65

The said 1,875 shares and the said 223.21 shares issued to Max W. Stoehr as aforesaid were issued to said Max W. Stoehr as Trustee, for said Eduard Stoehr and said Georg Stoehr respectively. The stock so issued was issued to or for the above named stockholders in the proportion that the said partners in said Stoehr & Sons, said co-partnership, had been interested in said partnership assets.

Thirtieth. A transfer of the assets of the said partnership of Stoehr & Sons to Stoehr & Sons, Inc., was made by what purports to be a bill of sale dated February 19, 1917, purporting to be signed "Stoehr & Sons" and witnessed by Max W. Stoehr, the complainant herein. This defendant alleges upon information and belief that the said defendant Stoehr & Sons, Inc., never obtained the title to the said assets of the partnership Stoehr & Sons by reason of said alleged bill of sale or otherwise, and that there was no valid transfer of any right, title or interest in said assets of the partnership of Stoehr & Sons to the defendant Stoehr & Sons, Inc. The partnership agreement of Stoehr & Sons contained a provision to the effect that said Eduard Stoehr and said Hans E. Stoehr should be the active partners, and said Georg Stoehr and said Max W. Stoehr should be the silent or passive partners, and that the active partners should have the right to conduct the business in such manner as they might think best, except that no transaction involving more than \$25,000 should be consummated without the written consent of all the partners. This defendant further alleges that the assets of Stoehr & Sons so attempted to be transferred to Stoehr & Sons, Inc., were largely in excess of the sum of \$25,000, and that no such written consent was ever obtained to the pretended transfer of the assets of Stoehr & Sons to Stoehr & Sons, Inc., as above set forth. This defendant further alleges that said pretended transfer of all the partnership assets of Stoehr & Sons was attempted to be made by Hans E. Stoehr and Max W. Stoehr pretending to act on behalf of all the partners, and was illegal, void and of no effect, and that the issue of the stock of the said corporation, in consideration of the said pretended assignment of the assets of the said co-partnership was ultra vires of the said corporation and void. This defendant further alleges that said transfer, if it had any validity or effect, operated only to transfer the assets of the partnership belonging to said Hans E.

Stoehr and said Max W. Stoehr individually and caused a dissolution of the partnership.

Thirty-first. On the same day, to wit, February 19, 1917, all of said 2,500 shares of stock were transferred on the books of Stoehr & Sons, Inc., to Hans E. Stoehr, Max W. Stoehr and one Georg Rohlig as voting trustees under a certain voting trust agreement dated February 19, 1917, between the stockholders of Stoehr & Sons, Inc., and said Hans E. Stoehr, said Max W. Stoehr and said Georg Rohlig, and voting trust certificates were thereupon issued by said voting trustees as follows:

Certificate holder.	Number of shares.
Max W. Stoehr, trustee.....	1875
H. E. Stoehr.....	337.14
Max W. Stoehr, trustee.....	223.21
Max W. Stoehr.....	44.65

Max W. Stoehr received and held said voting trust certificates for 1875 shares and 223.21 shares respectively as trustee for said Eduard Stoehr, a subject and resident of the then Empire of Germany, and for said Georg Stoehr, a subject and resident of the then Empire of Germany, respectively.

Thirty-second. Among the assets of the partnership of Stoehr & Sons were 5690 shares of the capital stock of the Botany Worsted Mills, which 5690 shares were subsequent to February 19, 1917, transferred on the books of the Botany Worsted Mills from Stoehr & Sons to Stoehr & Sons, Inc. Upon information and belief this defendant alleges that said Max W. Stoehr and Hans E. Stoehr through their stock ownership in the Botany Worsted Mills and through said stock ownership of Kammgarnspinnerei Stoehr & Company, controlled the election of directors and otherwise dominated and controlled the action of the Botany Worsted Mills and its officers, and the transfer of said 5690 shares on the books of the

Botany Worsted Mills from Stoehr & Sons to Stoehr & Sons, Inc., was made and brought about through said domination and control. But this defendant alleges that there was no delivery of the certificates representing 4400 shares out of said 5690 shares endorsed either in blank or to a specified person or persons appearing by the certificates to be the owner or owners of the shares of stock represented thereby from Stoehr & Sons to Stoehr & Sons, Inc., and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and that the title to 4400 out of said 5690 shares of stock of the Botany Worsted Mills was not transferred to Stoehr & Sons, Inc., pursuant to the provisions of Chapter 191 of the Laws of 1916 of New Jersey, said Act being entitled "An Act to make uniform the law of transfer of shares of stock in corporations," approved March 18, 1916.

Thirty-third. At the second meeting of the board of directors of Stoeck & Sons, Inc., held February 20, 1917, a resolution was passed purporting to authorize the purchase of the interest of said Kammgarnspinnerei Stoeck & Company in said 14,900 shares of the capital stock of the Botany Worsted Mills by Stoeck & Sons, Inc., from said Kammgarnspinnerei Stoeck & Company. On or about February 20, 1917, an instrument, a copy of which is attached to the bill of complaint herein marked Exhibit 1, was signed in the name of Kammgarnspinnerei Stoeck & Company, Aktiengesellschaft, by Hans E. Stoeck, and was signed in the name of Stoeck & Sons, Inc., by Georg G. Rohlig, Vice-President, which instrument pur-
113 ported to transfer the beneficial interest in the said 14,900 shares from the Kammgarnspinnerei Stoeck & Company, the beneficial owner thereof as above set forth, to the defendant Stoeck & Sons, Inc.

Thirty-fourth. The said paper set forth in the bill of complaint herein as Exhibit 1 contains a recital that \$5,000 was paid by Stoeck & Sons, Inc., to Kammgarnspinnerei Stoeck & Company, but this defendant alleges that neither said sum of \$5,000 nor any other sum whatsoever was paid by Stoeck & Sons, Inc., to the said Kammgarnspinnerei Stoeck & Company, but that said sum of \$5,000 was merely credited on the books of Stoeck & Sons, Inc., to the Botany Worsted Mills, and that said sum of \$5,000 was credited on the books of the Botany Worsted Mills to the account of Kammgarnspinnerei Stoeck & Company and debited to the account of Stoeck & Sons, Inc., and that no money or other thing of value passed from Stoeck & Sons, Inc., to Kammgarnspinnerei Stoeck & Company. Upon information and belief this defendant alleges that the crediting of said \$5,000 and the other bookkeeping entries regarding the same as set forth in this paragraph were procured and brought about through the domination and control of the Botany Worsted Mills by said Hans E. Stoeck and said Max W. Stoeck, as hereinabove set forth.

Thirty-fifth. On February 20, 1917, ten thousand (10,000) of said fourteen thousand nine hundred (14,900) shares, which had previously stood on the books of the Botany Worsted Mills in the name of Hans E. Stoeck, as Trustee for Kammgarnspinnerei Stoeck & Company, were transferred on the books of the Botany
114 Worsted Mills from his name as such trustee to the name of Stoeck & Sons, Inc. On the same day, to wit, February 20, 1917, the remaining four thousand nine hundred (4,900) of said fourteen thousand nine hundred (14,900) shares, which had previously stood upon the books of Botany Worsted Mills in the name of Max W. Stoeck as trustee for said Kammgarnspinnerei Stoeck & Company, were transferred on the books of the Botany Worsted Mills from his name as such trustee into the name of Stoeck & Sons, Inc. But this defendant alleges that there was no delivery of the certificates representing said 14,900 shares endorsed either in blank or to a specified person or persons appearing by the certificates to be the owner or owners of the shares of stock represented

thereby from said Hans E. Stoechr and Max W. Stoechr, as Trustees, to Stoechr & Sons, Inc., and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and this defendant alleges that the title to said 14,900 shares of stock was not transferred to Stoechr & Sons, Inc., pursuant to the provisions of Chapter 191 of the Laws of 1916 of the State of New Jersey, said Act being entitled "An Act to make uniform the law of transfer of shares of stock in corporations," approved March 18, 1916.

Thirty-sixth. This defendant further alleges that said instrument of February 20, 1917, was not executed by Kammgarnspinnerei Stoechr & Company alleged to be one of the parties thereto; that the alleged signing of said instrument was not the act of Kammgarnspinnerei Stoechr & Company; that said instrument does not
115 purport to have been signed or executed by an officer or agent of Kammgarnspinnerei Stoechr & Company; that the said Kammgarnspinnerei Stoechr & Company never by any corporate act or otherwise authorized or ratified the execution of said instrument; and that said Kammgarnspinnerei Stoechr & Company had no notice or knowledge of the existence of said alleged instrument or of the attempted transfer of its interest in said 14,900 shares of stock; and had no knowledge whatever concerning the same; but on the contrary, at the time of said attempted transfer of said interest, the relations between the United States of America and the then Empire of Germany had been broken off, and it was impossible and illegal for the complainant, or his brother Hans E. Stoechr, or any other person resident or domiciled in the United States to communicate with said Kammgarnspinnerei Stoechr & Company; that said instrument was in respect to the rights of said Kammgarnspinnerei Stoechr & Company in said 14,900 shares void and of no legal effect; that the Botany Worsted Mills and the officers and directors of said defendant Botany Worsted Mills were at the time of the attempted transfer of said 14,900 shares to Stoechr & Sons, Inc., dominated and controlled as hereinabove set forth by said Hans E. Stoechr and said Max W. Stoechr, and to carry out the illegal scheme of the parties to said alleged contract of February 20, 1917, the said Hans E. Stoechr and Max W. Stoechr caused an alleged transfer of said 14,900 shares of stock of the Botany Worsted Mills herein referred to to Stoechr & Sons, Inc., to be made upon the books of the Botany Worsted Mills; that said attempted transfer was ineffectual to transfer the title of said 14,900 shares from the Kammgarnspinnerei Stoechr & Company to Stoechr & Sons, Inc., and was void
116 ab initio and of no legal force and effect.

Thirty-seventh. This defendant alleges that from the 22nd day of October, 1917, until the 7th day of March, 1919, A. Mitchell Palmer was the Alien Property Custodian duly appointed by the President of the United States pursuant to the provisions of the Act of Congress of October 6, 1917, known as the "Trading with the enemy

Act," and that as such Alien Property Custodian, from the 22nd day of October, 1917, to the 7th day of March, 1919, the said A. Mitchell Palmer was authorized to exercise all the powers conferred upon such official by said Act as amended and by the Presidential proclamations and executive orders issued pursuant thereto. On or about the 7th day of March, 1919, the said A. Mitchell Palmer duly resigned his office of Alien Property Custodian, and Francis P. Garvan was duly appointed Alien Property Custodian pursuant to the provisions of the "Trading with the enemy Act," has duly qualified as such Alien Property Custodian and he is authorized to exercise all the powers conferred upon such official by said Act as amended by the Presidential proclamations and executive orders issued pursuant thereto.

Thirty-eighth. On or about April 5, 1918, the Alien Property Custodian, after investigation having previously determined pursuant to the provisions of said "Trading with the Enemy Act" that said 14,900 shares of the capital stock of the Botany Worsted Mills was property belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy or an ally of enemy
 117 not holding a license granted by the President under said Act, duly demanded of the defendant Botany Worsted Mills that the said 14,900 shares of stock should be transferred and delivered to the Alien Property Custodian or his nominee and on the 24th day of February, 1919, he as such official seized said shares of stock and required the Botany Worsted Mills to cancel the certificates evidencing or representing said shares of stock and in lieu thereof to issue new certificates therefor in the name of A. Mitchell Palmer, Alien Property Custodian, and in so doing he expressly reserved all rights acquired under or by virtue of the requirement above mentioned. On or about the 22nd of April, 1918, said 14,900 shares of stock were duly transferred by the Botany Worsted Mills on the books of said Company to the People's Bank and Trust Company, of Passaic, New Jersey, as depository for the Alien Property Custodian and the Botany Worsted Mills did on or about the 25th day of February, 1919, in further compliance with said requirements of said official and of the Trading with the Enemy Act, cancel said certificates theretofore issued representing said 14,900 shares of stock and in lieu thereof did issue new certificates in the name of A. Mitchell Palmer, as Alien Property Custodian. On or about March 13, 1919, the Alien Property Custodian duly demanded from Stoehr & Sons, Inc., all the rights, privileges and benefits of Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, under the said contract between said Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, and Stoehr & Sons, Inc., dated February 20, 1917, and duly seized said rights, privileges and benefits, expressly
 118 reserving all rights accruing under or by virtue of any demands theretofore or thereafter made with respect to said 14,900 shares.

Thirty-ninth. The Alien Property Custodian, under the provisions of said "Trading with the Enemy Act," as amended, upon the

determination of the enemy ownership of or interest in said 14,900 shares of stock as aforesaid, and upon the demand made therefor as aforesaid, and upon the seizure of the rights, privileges and benefits of the Kammgarnspinnerei Stoehr & Company as above set forth, succeeded to all the right of Kammgarnspinnerei Stoehr & Company of Leipzig in respect to said instrument, including the right of the Kammgarnspinnerei Stoehr & Company to disaffirm, repudiate, abrogate and terminate said instrument and to set aside the alleged transfer of said 14,900 shares of stock into the name of Stoehr & Sons, Inc., claimed to have been made pursuant to the terms of said instrument, and in making said determination and demands did, as the successor under the provisions of the "Trading with the Enemy Act," as amended, to the interest and rights of Kammgarnspinnerei Stoehr & Company in said 14,900 shares, repudiate, disaffirm, abrogate and terminate said instrument and did duly and lawfully cause to be set aside the alleged transfer of said 14,900 shares of stock from Kammgarnspinnerei Stoehr & Company to Stoehr & Sons, Inc., and did cause said 14,900 shares to be duly and lawfully transferred on the books of the Botany Worsted Mills to the People's Bank and Trust Company as depository of the Alien Property Custodian as aforesaid and did seize said stock and caused the certificates therefor to be cancelled and new certificates to be issued in lieu thereof to A. Mitchell Palmer, as Alien Property Custodian.

119 None of the deferred instalments of the purchase price or any part thereof was paid when due or at any other time. At the time of the making of each of the demands and seizure hereinabove in paragraphs thirty-eighth and thirty-ninth mentioned the said Stoehr & Sons, Inc., was in default as aforesaid, and the intent, purpose and legal effect of said demands and of each of them was to determine that said Stoehr & Sons, Inc., had no right, title or interest in said 14,900 shares of stock, and to exclude said Stoehr & Sons, Inc., from the enjoyment of any right, title or interest therein, as the said demands were effective to the end aforesaid, whether the right so to do arose from such default or otherwise.

As a third, separate and distinct defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the Court:

Fortieth. This defendant repeats and realleges the allegations contained in paragraphs twenty-fifth to thirty-ninth inclusive of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Forty-first. Defendant further alleges that the said instrument, Plaintiff's Exhibit 1, was absolutely void and of no effect
120 for the reason that said instrument purports to be signed on behalf of Kammgarnspinnerei Stoehr & Company by Hans E. Stoehr, and that the said Hans E. Stoehr was at the time of the alleged execution of said instrument the president and a director of and one of the chief stockholders of Stoehr & Sons, Inc., the other

party to said alleged instrument; that the attempted transfer by said instrument of the interest in said 14,900 shares of stock by the said Hans E. Stoehr and said Max W. Stoehr, who at that time stood in a fiduciary relation to the said Kammgarnspinnerei Stoehr & Company, was void and of no effect as against public policy and the rights of the beneficiary, said Kammgarnspinnerei Stoehr & Company, and of the Alien Property Custodian as successor to such beneficiary, Kammgarnspinnerei Stoehr & Company, for the reason that it was in effect an attempted transfer of the property of the principal by the fiduciaries to or for the benefit of the fiduciaries themselves as the holders or beneficial owners of stock in Stoehr & Sons, Inc., that such an attempted transfer by such trustees or fiduciaries of said 14,900 shares to Stoehr & Sons, Inc., the corporation in which they were personally interested, was and is absolutely invalid and void as against public policy; and that it was and is immaterial whether the said alleged contract or the attempted transfer of said interest thereunder was fair or for the benefit of said Kammgarnspinnerei Stoehr & Company or otherwise.

Forty-second. The Alien Property Custodian under the provisions of said "Trading with the Enemy Act," upon the determination of the enemy ownership of or interest in said 14,900 shares of stock as aforesaid, and upon demand made therefor as aforesaid, and seizure thereof as aforesaid, and upon the seizure of the rights, privileges and benefits of the Kammgarnspinnerei Stoehr & Co. as above set forth, succeeded to the rights of the Kammgarnspinnerei Stoehr & Company of Leipzig, in respect to the title and ownership of said 14,900 shares, and also in respect to said instrument, Plaintiff's Exhibit 1, including the right of the Kammgarnspinnerei Stoehr & Company to disaffirm and repudiate said instrument and to set aside the alleged transfer of the interest in said 14,900 shares of stock into the name of Stoehr & Sons, Inc., claimed to have been made pursuant to the terms of said instrument, and this defendant became vested with all the rights, interests and powers of said Kammgarnspinnerei Stoehr & Company in or with respect to said 14,900 shares of stock and said alleged instrument, Plaintiff's Exhibit 1, and in making the aforesaid determination and demands and seizure did, as the successor, under the provisions of the "Trading with the Enemy Act," to the rights and interests of Kammgarnspinnerei Stoehr & Company in said 14,900 shares and with respect to said alleged contract, repudiate and disaffirm said contract, and did duly and legally cause said 14,900 shares of stock to be transferred on the books of the Botany Worsted Mills from the name of Stoehr & Sons, Inc., to People's Bank and Trust Company of Passaic, New Jersey, as depository for the Alien Property Custodian as aforesaid, and did seize said stock and caused the certificates therefor to be cancelled and new certificates to be issued in lieu thereof to A. Mitchell Palmer, as Alien Property Custodian.

122 As a fourth, separate and distinct and partial defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the Court:

Forty-third. Prior to February 15, 1915, Kammgarnspinnerei Stoehr & Company, Aktiengesellschaft, of Plagwitz, Leipzig, Germany, a corporation organized under the laws of the then Empire of Germany, was the owner in fact and of record on the books of the Botany Worsted Mills of 14,900 shares of the capital stock of the Botany Worsted Mills.

Forty-fourth. On or about February 15, 1915, there was transferred 10,000 of said 14,900 shares on the books of the Botany Worsted Mills to Hans E. Stoehr, as trustee for said Kammgarnspinnerei Stoehr & Company; and on or about February 26, 1915, there was transferred the remaining 4,900 of said shares on the books of the Botany Worsted Mills to Max W. Stoehr, as Trustee for Kammgarnspinnerei Stoehr & Company.

Forty-fifth. On or about February 16, 1917, there was filed in the office of the Secretary of State of New York, a certificate of incorporation of Stoehr & Sons, Inc., with an authorized capital stock of \$250,000 consisting of 2,500 shares of the par value of \$100 each.

123 Forty-sixth. On or about February 20, 1917, an instrument was signed in the name of Kammgarnspinnerei Stoehr & Company by Hans E. Stoehr and in the name of Stoehr & Sons, Inc., by Georg G. Rohlig, Vice-President, a copy of which instrument is annexed to the complaint and marked Complainant's Exhibit 1; that the subject matter of said instrument was said 14,900 shares of stock.

Forty-seventh. Said 14,900 shares were on or about February 20, 1917, transferred on the books of the Botany Worsted Mills from the names of Hans E. Stoehr, Trustee as aforesaid, and Max W. Stoehr, Trustee as aforesaid, respectively, to the name of Stoehr & Sons, Inc.

Forty-eighth. On or about April 5, 1918, the Alien Property Custodian, having duly and lawfully and in accordance with the provisions of the "Trading with the Enemy Act," and in particular with the provisions of Section 7, sub-section (c) of said Act, after investigation determined that said 14,900 shares of stock of Botany Worsted Mills, hereinabove referred to, belonged to or were held for, by, or on account of, or on behalf of or for the benefit of an enemy or ally of enemy not holding a license granted by the President under said "Trading with the Enemy Act," duly demanded that the Botany Worsted Mills transfer to the Alien Property Custodian said 14,900 shares of stock. Said 14,900 shares of stock were thereafter and on or about the 22nd of April, 1918, duly transferred on the books of the Botany Worsted Mills to Peoples Bank and

124 Trust Company, of Passaic, New Jersey, as depositary for the Alien Property Custodian. Said 14,900 shares stood of record on the books of the Botany Worsted Mills in the name of Peoples Bank and Trust Company, as depositary for the Alien Property Custodian until the 25th day of February, 1919.

Forty-ninth. On the the declaration that a state of war existed between the United States of America and the then Empire of Germany all obligations and contractual relations between citizens of the United States of America and of the Empire of Germany were dissolved and abrogated and to carry out during the war any part of such a contract would involve intercourse with the enemy and would be illegal and upon the declaration of war as aforesaid, the same was dissolved and became void and was abrogated.

Fiftieth. If any contract or agreement existed between Kamm-garnspinneri Stoehr & Company and Stoehr & Sons, Inc., respecting said 14,900 shares of stock, the recognition by the United States of America on April 6, 1917, of the existence of a state of war between the United States of America and the then Empire of Germany dissolved said contract between said parties, for the reason that any performance of said contract or the continuance of said contract would involve trading or intercourse with the enemy and said contract upon the declaration of war as aforesaid became illegal and void and was abrogated.

125 For a fifth, separate and distinct and partial defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the Court:

Fifty-first. Prior to February 19, 1917, the complainant, Max W. Stoehr, Eduard Stoehr, who was the father of the complainant and who was a German subject residing in Germany, Hans E. Stoehr, who was a brother of the Complainant and who was a German subject and Georg Stoehr, who was a brother of the complainant and who was a German subject residing in Germany, were co-partners engaged in business under the firm name and style of Stoehr & Sons, the principal place of business of said co-partnership being in New York City, New York. Said Eduard Stoehr and Georg Stoehr continued thereafter to reside in Germany up to, including and subsequent to April 6, 1917, when United States of America recognized that state of war existed between the United States and the then Empire of Germany.

Fifty-second. Said Stoehr & Sons were prior to February 19, 1917, the owners among other assets of 5,690 shares of the capital stock of the Botany Worsted Mills.

126 Fifty-third. On or about February 16, 1917, there was filed in the office of the Secretary of State of the State of New York, a certificate of incorporation of a corporation Stoehr & Sons, Inc., with a capital stock of \$250,000 consisting of 2,500 shares of the par value of \$100 each.

Fifty-fourth. On February 19, 1917, there was signed by the name of Stoehr & Sons an instrument purporting to be a bill of sale of all its business, property, good will, firm name and all other assets to Stoehr & Sons, Inc., which included said 5,690 shares of the capital stock of the Botany Worsted Mills, which said 5,690 shares of stock were thereafter transferred upon the books of the Botany Worsted Mills into the name of Stoehr & Sons, Inc. The pretended consideration for said transfer of property and assets was the issuance of the entire capital stock of \$250,000 of Stoehr & Sons, Inc., to or for the benefit of the former partners of Stoehr & Sons in the proportions of their respective partnership interests in said firm, and the assumption by Stoehr & Sons, Inc., of the debts and obligations of the partnership Stoehr & Sons.

Fifty-fifth. Said stock of Stoehr & Sons, Inc., was on February 19, 1917, issued as follows:

Name of stockholder.	Number of shares.
Max W. Stoehr.....	1875
Hans E. Stoehr.....	357.14
Max W. Stoehr.....	223.21
Max W. Stoehr.....	44.65

The said 1,875 shares and the said 223.21 shares so issued to Max W. Stoehr were issued to him as Trustee for said Eduard Stoehr and said Georg Stoehr respectively.

Fifty-sixth. On February 19, 1917, an instrument was signed purporting to be a voting trust agreement between said Hans E. Stoehr and said Max W. Stoehr as the stockholders of Stoehr & Sons, Inc., as parties of the first part, and said Hans E. Stoehr, said Max W. Stoehr and one Georg Rohlig, as voting trustees, as parties of the second part. Said instrument provided for the transfer and delivery of the certificates by the stockholders to the voting trustees, and that the stockholders should receive in exchange therefor trust receipts as provided in said instrument; the alleged voting trust was to continue for a period of five years from the date of said agreement, that is, until February 19, 1922; the persons named in said instrument as voting trustees were authorized to cause the stock certificates so deposited to be transferred upon the books of Stoehr & Sons, Inc., in the names of said persons as voting trustees; and the said persons as such voting trustees were to possess and be entitled to exercise all rights of every name and nature, including the right to vote, in respect to any and all such shares deposited. The holders of the trust certificates to be issued by the said persons as such voting trustees as provided in the said instrument were to be entitled to receive payments equal to the dividends, if any, collected by said persons as voting trustees upon the shares of stock of the said Company standing in their name. The said persons as voting trustees agreed to issue certificates for the number of shares transferred and delivered to them in the form set forth in Exhibit

A of said instrument. Said instrument provided that at the expiration of said five years' period, to wit, after February 19, 1922, and within ten days after demand, the said persons named as voting trustees therein were upon the surrender of said trust receipts or certificates then outstanding to exchange the same for and
 128 to deliver to the then holders of said trust receipts or certificates proper certificates of the equivalent kind and amount of the common stock of said Company.

Fifty-seventh. An instrument purporting to be a voting trust certificate was thereupon issued to Max W. Stoehr as Trustee for Eduard Stoehr for 1875 shares of the stock of Stoehr & Sons, Inc., and a further instrument purporting to be a voting trust certificate was issued to Max W. Stoehr as Trustee for Georg Stoehr for 223.21 shares of the stock of Stoehr & Sons, Inc.

Fifty-eighth. On April 6, 1917, the United States of America declared that a state of war existed between the United States of America and the then Empire of Germany, and said state of war continued thereafter and has continued up to the present time, and will continue until the date of the proclamation of the exchange of ratifications of the treaties of peace, unless the President of the United States shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the end of the war.

Fifty-ninth. On or about March 8th, 1918, the Alien Property Custodian, having duly and lawfully and in accordance with the provisions of the Trading with the Enemy Act, as amended, and in particular with the provisions of Section 7, sub-section (c) of said Act, after investigation determined that said voting trust certificate for 1,875 shares of the stock of Stoehr & Sons, Inc., standing in the name of Max W. Stoehr, as Trustee for said Eduard Stoehr, and
 129 said voting trust certificate for 223.21 shares of the stock of Stoehr & Sons, Inc., standing in the name of said Max W. Stoehr, as trustee for said Georg Stoehr, belonged to or were held for, by, on account of, or on behalf, or for the benefit of an enemy or ally of enemy not holding a license granted by the President under the said Trading with the Enemy Act, duly demanded said voting trust certificates and the same were thereupon duly delivered to Passaic Trust & Safe Deposit Company, of Passaic, New Jersey, as depository for the Alien Property Custodian, and on the 28th day of March, 1919, the Alien Property Custodian seized said voting trust certificates and required the complainant to cancel both of said voting trust certificates and in lieu thereof to issue new voting trust certificates in the name of Francis P. Garvan as Alien Property Custodian, and in so doing he expressly reserved all rights acquired under or by virtue of the requirement above mentioned.

Sixtieth. The performance of the alleged contract between Stoehr & Sons and Stoehr & Sons, Inc., contemplated the delivery by Stoehr & Sons to Stoehr & Sons, Inc., of 5,690 shares of the stock of the Botany Worsted Mills. Forty-four hundred shares of said 5,690

shares of said stock were represented by certificates which were at the time of the execution of said bill of sale in Germany. On the declaration that a state of war existed between the United States of America and the then Empire of Germany all obligations and contractual relations between the citizens of the United States and of the Empire of Germany were dissolved and abrogated and to carry out during the war any part of said alleged instrument between Stoehr & Sons and Stoehr & Sons, Inc., or any part of said instrument purporting to be a voting trust agreement as above set forth, 130 would involve intercourse with the enemy and would be illegal and upon the declaration of war as aforesaid the same was dissolved and became void and abrogated.

If any contract or agreement existed between Stoehr & Sons and Stoehr & Sons, Inc., or if any voting trust agreement existed between the stockholders of Stoehr & Sons, Inc., and the persons named in the instrument above set forth as voting trustees, the recognition by the United States of America on April 6, 1917, of the existence of a state of war between the United States of America and the then Empire of Germany dissolved the said alleged contract between Stoehr & Sons and Stoehr & Sons, Inc., and the said alleged voting trust agreement, for the reason that the performance of said alleged agreements involved trading or intercourse with the enemy as above set forth, and for the further reason that said alleged agreements upon the declaration of war as aforesaid became illegal and void as against public policy.

For a sixth, separate and distinct defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the court:

Sixty-first. Defendant repeats and realleges the allegations contained in paragraphs Twenty-fifth to Thirty-ninth inclusive 131 of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Sixty-second. This defendant further alleges with respect to said alleged contract for the purchase of said 14,900 shares by Stoehr & Sons, Inc., from Kammgaruspinnerei Stoehr & Company of Leipzig, that it was not intended to transfer the ownership of the stock of the Botany Worsted Mills to Stoehr & Sons, Inc., but it was the intention of the parties to the said alleged contract to affect merely the control of the defendant Botany Worsted Mills as between its stockholders and that the said contract had no reference to the status of such control so far as the Alien Property Custodian was concerned; that the parties to said alleged contract admitted that the control of the Botany Worsted Mills might be imperilled by a state of war between the United States of America and the then Empire of Germany because the voting right on stock of alien enemies or in which alien enemies had the beneficial interests was doubtful under the decisions of the courts, and if said Kammgaruspinnerei Stoehr & Company were deprived of said voting rights

the control of the Botany Worsted Mills might be lost to such alien enemies; and that it was not the intention of the said parties that the status of such shares as far as the rights of the Government of the United States were concerned should be in anywise affected whether such shares were in Kammgarnspinnerei Stoechr & Company or in the defendant Stoechr & Sons, Inc.

132 As a seventh, separate and distinct defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the Court:

Sixty-third. Defendant repeats and realleges the allegations contained in paragraphs twenty-fifth to thirty-ninth inclusive of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Sixty-fourth. The said 14,900 shares of the capital stock of the Botany Worsted Mills hereinabove referred to, which constituted the subject matter of said instrument, Plaintiff's Exhibit 1, stood of record on the books of the Botany Worsted Mills in the name of said Kammgarnspinnerei Stoechr & Company in the year 1914 and had so stood in the name of said Company for a long time prior thereto; that in the month of February, 1915, there was delivered to the Botany Worsted Mills a letter purporting to be signed by Georg Stoechr, Vice-president of the Botany Worsted Mills, and addressed to the Treasurer of the Botany Worsted Mills at Passaic, New Jersey, and purporting to be dated at Leipzig, Plagwitz, January 15, 1915. Said letter purported to certify that certificates representing 10,000 shares of the said 14,900 shares of the stock of the Botany Worsted Mills as aforesaid had been deposited with said Georg Stoechr, as such Vice-president, endorsed to Hans E. Stoechr, as Trustee, with the request to cause the same to be transferred upon the books of said Company to the above named

133 endorsee Hans E. Stoechr as Trustee. Said 10,000 shares were on the 15th of February, 1915, recorded on the books of the Botany Worsted Mills as having been transferred to Hans E. Stoechr as Trustee by the deposit of the certificates therefor representing the same with said Georg Stoechr as such Vice-president, at Leipzig, Germany. With reference to 4,900 shares of said 14,900 shares, the Botany Worsted Mills received a letter purporting to be signed by said Georg Stoechr, as such Vice-president, addressed to the Treasurer of the Botany Worsted Mills at Passaic, New Jersey, and purporting to be dated at Plagwitz, Leipzig, February 1, 1915. Said letter purported to certify that certificates representing said 4,900 shares had been deposited with said Georg Stoechr, as such Vice-president of the Botany Worsted Mills, endorsed to Max W. Stoechr as Trustee, with the request to cause the same to be transferred upon the books of the Company to the above named endorsee, said Max W. Stoechr as Trustee. Said 4,900 shares were on February 26, 1915, recorded on the books of the Botany Worsted Mills as having been transferred to Max W. Stoechr, as Trustee, by deposit of certificates with said Georg Stoechr, Vice-president, at Leipzig, Germany. At the

time of the said alleged transfers of said 14,900 shares of stock of the Botany Worsted Mills, the said Botany Worsted Mills and the officers and directors thereof were dominated and controlled by said Hans E. Stoechr and the complainant, Max W. Stoechr, and said alleged transfers were made by the officers of said Company under the domination and control of said Hans E. Stoechr and Max W. Stoechr as aforesaid, pursuant to the scheme and conspiracy hereinafter set forth.

134 Sixty-fifth. This defendant alleges that at the time of the alleged transfer on February 20, 1917, of said 14,900 shares of said Hans E. Stoechr and said Max W. Stoechr respectively from their names as trustees to the name of Stoechr & Sons, Inc., as hereinabove set forth there was no delivery of the certificates representing said 10,000 and 4,900 shares of the stock of the Botany Worsted Mills endorsed either in blank or to specified person or persons appearing by the certificates to be the owner or owners of the shares of stock represented thereby from Hans E. Stoechr and Max W. Stoechr as Trustees to Botany Worsted Mills, and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and that the title to said 14,900 shares of stock attempted to be transferred by said Hans E. Stoechr and said Max W. Stoechr respectively from their names as trustees to the name of Stoechr & Sons, Inc., as hereinbefore set forth, was not duly transferred to Stoechr & Sons, Inc., pursuant to the provisions of Chapter 191 of the Laws of 1916 of the State of New Jersey, said Act being entitled "An Act to make uniform the law of transfer of shares of stock in corporations," approved March 18, 1916.

Sixty-sixth. On February 3, 1917, diplomatic relations between the United States of America and the then Empire of Germany were severed and a state of war between said nations was then imminent and the likelihood of the commencement of said war was of common knowledge both in the United States of America
135 and in the then Empire of Germany. At the time of the execution of the said instrument of attempted transfer dated February 20, 1917, the Republic of France, the United Kingdom of Great Britain and Ireland, the Dominion of Canada, the Commonwealth of Australia and the then Empire of Germany each had exercised their sovereign right to capture enemy property on land, and this fact was well known to those who participated in the attempted execution of said instrument of February 20, 1917. It was likewise well known that in the anticipated event of the entry of the United States of America in said European war it would exercise its sovereign right to capture enemy property. Defendant alleges that the said incorporation of Stoechr & Sons, Inc., the attempted transfer of the assets of the partnership of Stoechr & Sons to Stoechr & Sons, Inc., the signing of the alleged agreement of February 20, 1917, and the attempted transfer of the said 14,900

shares of stock from the names of said Hans E. Stoechr and Max W. Stoechr as Trustees for the said Kammgarnspinnerei Stoechr & Company into the name of Stoechr & Sons, Inc., and all of the other acts and proceedings in relation to the transfer of said partnership assets and to the attempted transfer of the title or interest of Kammgarnspinnerei Stoechr & Company in said 14,900 shares hereinabove set forth, and the attempted subjection of the stock of Stoechr & Sons, Inc., to a voting trust to run for a period of five years, the voting trustees being said Max W. Stoechr, said Hans E. Stoechr and one Georg Rohlig who was associated with and whose acts were dominated and controlled by the said Stoechrs, were acts done with the intent and purpose of the parties thereto to defeat the belligerent rights of the United States of America, and were

136 done and carried out in an attempt to thwart the United States of America in the exercise of its sovereign power to capture enemy property on land as well as at sea, and were all part of a conspiracy on the part of the parties thereto to defeat the belligerent rights of the United States of America as aforesaid and to prevent the United States of America from exercising its sovereign right to capture enemy property on land as well as at sea as aforesaid; and that said acts as aforesaid done or attempted to be done under said conspiracy and with said unlawful intent were contrary to public policy and were illegal and absolutely void.

Sixty-seventh. Defendant further alleges that the said acts of the complainant, Max W. Stoechr, and his brother Hans E. Stoechr who were members of the Partnership Stoechr & Sons; the instrument attempting to bind said the Kammgarnspinnerei Stoechr & Company, including the said alleged attempted transfer of said 14,900 shares of stock; the incorporation of Stoechr & Sons, Inc.; the alleged transfer of the assets of the partnership Stoechr & Sons to Stoechr & Sons, Inc.; the alleged execution of the instrument of February 20, 1917, the attempted subjection of the stock of Stoechr & Sons, Inc., to a voting trust to run for a period of five years, the voting trustees being said Max W. Stoechr, said Hans E. Stoechr and one Georg Rohlig, who was associated with and whose acts were dominated and controlled by the said Stoechrs, were all part of a scheme and conspiracy to distort and hide the truth and cover up the transactions in regard to the assets of said partnership and in regard to the ownership of said 14,900 shares of stock of the Botany Worsted Mills; that the said incorporation of Stoechr & Sons, Inc., was a
 137 mere cloak and shelter behind which the parties attempted to conceal the real ownership of the property above referred to in fraud of the rights of the United States as aforesaid; that the said corporation of Stoechr & Sons, Inc., was a mere tool of the complainant herein and his associates who were members of the partnership of Stoechr & Sons, and that the corporation was in fact the said persons, to wit, Max W. Stoechr, the complainant herein, and the other partners in the said partnership Stoechr & Sons; that the difference between the legal personality of the said persons and the said corporation of Stoechr & Sons, Inc., gave the corporation no

greater rights than the said persons then had, and the said difference in legal personality could not and cannot be used to enable the corporation Stoehr & Sons, Inc., to become a means of fraud and a means to evade the legal responsibility and legal accountability of said persons, and cannot and could not be used as a cloak or cover to defeat the right of the United States of America to capture enemy property on land or to defeat the rights of the Alien Property Custodian to demand and receive the delivery of property held by, for, or on account of persons who are alien enemies. Looking beyond the formal corporate difference between said parties and said corporation and to the real and substantial rights rather than mere corporate organization, the ownership of said 14,900 shares of stock of the Botany Worsted Mills and the ownership of the assets of said partnership of Stoehr & Sons remained the same as it was prior to said attempted transfer by Stoehr & Sons, the partnership, to Stoehr & Sons, Inc., and the attempted transfer of the interest in said 14,900 shares from Kammgarnspinnerei Stoehr & Company to Stoehr & Sons, Inc.

Sixty-eight. The complainant has participated in an unconscionable plan or scheme to place property which would be subject to the right of confiscation by the United States in the event of war between the United States and the German Empire in the apparent situation of being entitled to protection by his Government rather than subject to confiscation.

This suit is based upon an alleged contract made as a part of and in furtherance of the said plan and this plaintiff is now asking this court to give effect to such plan and purpose.

As an eighth, separate and distinct and partial defense to the allegations of the bill of complaint herein, this defendant alleges and shows to the court:

Sixty-ninth. Defendant repeats and realleges the allegations contained in paragraphs Twenty-fifth to Thirty-ninth inclusive of this answer with the same force and effect as if the allegations contained in said paragraphs were here set forth at length.

Seventieth. Prior to the commencement of this suit, the Alien Property Custodian, after due investigation, duly determined that the said 14,900 shares of the capital stock of the Botany Worsted Mills 'clonged to or were held for, on account of, or for the benefit of the Kammgarnspinnerei Stoehr & Co. which, after due investigation, he duly determined to be an enemy not holding a license granted by the President, and did require that said 14,900 shares of the capital stock of the Botany Worsted Mills be conveyed, transferred, assigned, delivered and paid over to the Alien Property Custodian, to be by him held, administered and accounted for as provided by law. This defendant further alleges that prior to the commencement of this suit the Alien Property Custodian, after due investigation, duly determined that 9,510 other shares of the capital stock of the Botany Worsted Mills, other than said

on account of persons whom the Alien Property Custodian determined to be enemies not holding a license granted by the President, and required that said 9,510 shares of said capital stock of the Botany Worsted Mills be conveyed, transferred, assigned, delivered and paid over to the Alien Property Custodian, to be by him held, administered and accounted for as provided by law. Said 14,900 shares and said 9,510 other shares above referred to, making a total of 24,410 shares, were thereupon duly transferred on the books of the Botany Worsted Mills to the Alien Property Custodian, or to his nominee, and said 24,410 shares were all the shares that the Alien Property Custodian has so demanded and so taken over.

Seventy-first. The Alien Property Custodian, prior to the commencement of this action, pursuant to the provisions of the Trading with the Enemy Act, as amended, and pursuant to the executive orders and presidential proclamations issued thereunder, duly and lawfully advertised to be sold at public auction said 24,410 shares of the stock of the Botany Worsted Mills.

Seventy-second. Upon information and belief, this defendant alleges that Stoeck & Sons, Inc., is the holder of record on the books of the Botany Worsted Mills of 5,690 shares of the capital stock of the Botany Worsted Mills, but that said 5,690 shares were and are not a part of said 24,410 shares so advertised to be sold by the Alien Property Custodian as aforesaid, nor is any part of said 5,690 shares included in said 24,410 shares advertised as aforesaid.

Seventy-third. Defendant further alleges that the board of directors of Stoeck & Sons, Inc., by means of a resolution duly adopted at a regular meeting of the said board of directors, voluntarily determined to join with the Alien Property Custodian in the said public sale as aforesaid, by offering for public sale at the time and place advertised by the Alien Property Custodian for the sale of said 24,410 shares and upon the terms and conditions of sale as promulgated by the Alien Property Custodian in connection with said sale, 1,290 shares out of the total of 5,690 shares standing of record on the books of the Botany Worsted Mills in the name of Stoeck & Sons, Inc., as aforesaid. Pursuant to said resolution of the board of directors, said Stoeck & Sons, Inc., joined in the advertisement and offer for sale said 1,290 shares of stock of the Botany Worsted Mills at public auction at the same time and place and subject to the same terms and conditions of sale as were advertised by the Alien Property Custodian for the sale of said 24,410 shares, so that the Alien Property Custodian and said Stoeck & Sons, Inc., jointly offered for public sale 25,700 shares of the stock of the Botany Worsted Mills. Except as aforesaid, neither said Stoeck & Sons, Inc., nor the Alien Property Custodian has offered for sale or has taken any steps towards selling or offering for sale the said 5,690 shares of the capital stock of Botany Worsted Mills standing in the name of Stoeck & Sons, Inc., on the books of the Botany Worsted Mills.

Wherefore this defendant prays that the injunction and other relief demanded in the bill of complaint herein be denied and that said bill of complaint be dismissed, with the costs and disbursements of this suit.

FRANCIS G. CAFFEY,

*Solicitor for Defendant Francis P. Garvan as Alien Property Custodian,
U. S. Court and Post-Office Building,
New York City.*

GEORGE L. INGRAHAM,

LEE C. BRADLEY, *Of Counsel.*

144 District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Answer of Botany Worsted Mills.

John Quinn, Solicitor for defendant, Botany Worsted Mills, 31 Nassau Street, Borough of Manhattan, New York City.

John Quinn, Paul Kieffer, of Counsel.

U. S. District Court, S. D. of N. Y. Filed May 26, 1919.

145 In the District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. DUVALL, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Paimer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

Answer of Defendant Botany Worsted Mills.

Now comes the above named defendant Botany Worsted Mills, and answering the bill of complaint and supplemental bill exhibited in this cause, says:

First. This defendant admits the allegations of paragraph first of the bill that the defendant Palmer is and at all times thereafter mentioned, was the Alien Property Custodian, having been duly appointed to such office pursuant to the Act of Congress, approved October 6, 1917, and known as the "Trading with the Enemy Act." This defendant further admits the allegations of said paragraph first of the bill that this defendant is and ever since May 11, 1899, has been a corporation duly organized by and under the laws of New Jersey, and that the persons alleged in said paragraph first to be acting as directors of this defendant are directors of this defendant.

This defendant denies that it has any knowledge or information sufficient to form a belief as to the other allegations of paragraph first of the bill.

Second. This defendant denies the allegations of paragraph second of the bill.

Third. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph third of the bill.

Fourth. This defendant admits the allegations of paragraph fourth of the bill.

Fifth. This defendant admits the allegations of paragraph fifth of the bill.

Sixth. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph sixth of the bill.

Seventh. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph seventh of the bill, except that it admits that prior to February 1915 fourteen thousand nine hundred (14,900) shares of the capital stock of this defendant stood on the books of this defendant in the name of Kammgarnspinnerei Stoechr & Co., Actiengesellschaft; and that on or about February 15, 1915, ten thousand (10,000) of said fourteen thousand nine hundred (14,900) shares were transferred on the books of this defendant from the name of Kammgarnspinnerei Stoechr & Co., Actiengesellschaft into the name of Hans E. Stoechr as trustee; and that on or about February 26, 1915 the remaining four thousand nine hundred (4,900) shares of said fourteen thousand nine hundred (14,900) shares were transferred on the books of this defendant from the name of Kammgarnspinnerei Stoechr & Co., Actiengesellschaft into the name of Max W. Stoechr as trustee.

Eighth. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph eighth of the bill.

Ninth. This defendant denies the allegations of paragraph ninth of the bill, except that it admits that on April 6, 1917 and December 7, 1917 respectively, the United States of America recognized that a

state of war existed between the United States and the then Empire of Germany and the then Empire of Austria-Hungary, and except also that it admits that an armistice was signed on November 11, 1918.

Tenth. This defendant denies the allegations of paragraph tenth of the bill.

Eleventh. This defendant denies the allegations of paragraph eleventh of the bill.

Twelfth. This defendant denies the allegations of paragraph twelfth of the bill.

Thirteenth. This defendant denies the allegations of paragraph thirteenth of the bill.

Fourteenth. This defendant admits that on or about the 20th of March, 1918 this defendant was and now is solvent, and that
148 this defendant had a large surplus and reserve fund and did not possess or deal in perishable property.

This defendant has no knowledge or information sufficient to form a belief as to the other allegations of paragraph fourteenth of the bill.

Fifteenth. This defendant admits that the terms and conditions of sale of the stock of this defendant advertised to be sold by the Alien Property Custodian are substantially as alleged in paragraph fifteenth of the bill.

This defendant denies that it has any knowledge or information sufficient to form a belief as to the other allegations and conclusions of paragraph fifteenth of the bill.

Sixteenth. This defendant denies the allegations of paragraph sixteenth of the bill.

Seventeenth. This defendant denies the allegations of paragraph seventeenth of the bill.

Eighteenth. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph eighteenth of the bill.

Nineteenth. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph nineteenth of the bill.

Twentieth. This defendant denies the allegations and conclusions of paragraph twentieth of the bill.

Twenty-first. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph first of the supplemental bill.

Twenty-second. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph second of the supplemental bill.

149 Twenty-third. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph third of the supplemental bill.

As a first separate and distinct defense to the bill of complaint of the complainant herein, this defendant further alleges and shows to the court:

Twenty-fourth. This defendant is and ever since May 11th, 1889 has been a corporation duly organized by and under the laws of New Jersey. The capital stock of this defendant is three million six hundred thousand dollars (\$3,600,000) and consists of thirty-six thousand shares (36,000) of the par value of one hundred dollars (\$100) each.

Twenty-fifth. The defendants, James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Horace C. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney and Richard Stockton, were at the time of the filing of the bill herein directors of this defendant and constituted its Board of Directors. The said directors were duly elected pursuant to the provisions of the law of New Jersey and of the articles of incorporation and the by-laws of this defendant either at adjourned annual stockholders' meetings of the company duly and legally called and held, or, for the purpose of filling vacancies then existing, at meetings of the Board of Directors of this defendant
150 duly and legally called and held. At the time of the adjourned annual meetings of the stockholders of this defendant at which meeting certain of the said directors were elected as aforesaid, the Alien Property Custodian was not a stockholder of record of this defendant and did not vote in person or by proxy at said meetings. The present members of the board of directors of this defendant elected either at the annual meeting of its stockholders held on March 18, 1919, or for the purpose of filling a vacancy then existing, at a meeting of the board of directors of the defendant duly and legally called and held, are as follows: Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Horace C. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, William J. Hellmer, Richard Stockton, William H. Folwell and Douglas I. McKay.

Twenty-sixth. The said members of the Board of Directors of this defendant have lawfully and in good faith administered the affairs of this defendant as such directors in the best interests of all the stockholders of this defendant.

Twenty-seventh. On or about April 5, 1918, the Alien Property Custodian having duly and lawfully and in accordance with the provision of the "Trading with the Enemy Act," and in particular with Section 7, Sub-section (c) of said act, after investigation determined that fourteen thousand nine hundred (14,900) shares of the stock of this defendant then standing of record upon the books of this defendant in the name of Stoehr & Sons, Inc., belonged to or were

held for, by, or on account of, or on behalf of, or for the benefit of, Kammgarnspinnerei Stoehr & Co., Actiengesellschaft, an enemy or ally of enemy not holding a license granted by the President under said "Trading with the Enemy Act," duly demanded that
151 this defendant transfer to the Alien Property Custodian, said fourteen thousand nine hundred (14,900) shares, and on the 24th day of February, 1919 said official seized said shares of stock and required the Botany Worsted Mills to cancel the certificates evidencing or representing said shares of stock and in lieu thereof to issue new certificates therefor in the name of A. Mitchell Palmer as Alien Property Custodian, and in so doing he expressly reserved all rights acquired under or by virtue of the requirement above mentioned. This defendant on or about the 22nd day of April, 1918, acting pursuant to the provisions of said "Trading with the Enemy Act" duly and legally transferred on the books of the Botany Worsted Mills, said fourteen thousand nine hundred (14,900) shares to Peoples Bank & Trust Company of Passaic, New Jersey, as depositary for the Alien Property Custodian. Said fourteen thousand nine hundred (14,900) shares stood of record on the books of this defendant in the name of said Peoples Bank & Trust Company as depositary for the Alien Property Custodian, until the 25th day of February 1919 on which date the Botany Worsted Mills in further compliance with said requirements of said official and of the Trading with the Enemy Act, cancelled said certificates theretofore issued, representing said 14,900 shares of stock and in lieu thereof issued new certificates in the name of A. Mitchell Palmer as Alien Property Custodian. On or about March 13, 1919 the Alien Property Custodian duly demanded from Stoehr & Sons, Inc., all the rights, privileges and benefits of Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, under the said contract between said Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, and Stoehr & Sons Inc., dated February 20, 1917, and duly seized said
152 rights, privileges and benefits, expressly reserving all rights accruing under or by virtue of any demands theretofore or thereafter made with respect to said 14,900 shares.

Twenty-eighth. Stoehr & Sons, Inc. was at the time of the filing of the bill herein and now is the holder of record on the books of this defendant of five thousand six hundred and ninety (5,690) shares of the stock of this defendant. The Alien Property Custodian has made no demand upon this defendant for the transfer of said five thousand six hundred and ninety (5,690) shares to the Alien Property Custodian and has made to this defendant no claim of enemy ownership in said five thousand six hundred and ninety (5,690) shares, and has made no demand upon this defendant of any kind whatsoever in regard to said five thousand six hundred and ninety (5,690) shares.

Twenty-ninth. This defendant has not heretofore participated in any manner and does not intend to participate in the offer or advertisement for the sale of stock of this defendant by the Alien Prop-

erty Custodian, as alleged in paragraph fourteenth of the bill, and has not participated and does not intend to participate in the publication, circulation and issuance of the terms and conditions on which said Alien Property Custodian proposes to sell the shares of stock so advertised by him, as alleged in paragraph fifteenth of the bill and has not participated and does not intend to participate in said sale, as alleged in said paragraph fifteenth of the bill.

153 Wherefore, this defendant prays that the said bill of complaint and supplemental bill be dismissed with the costs and disbursements of this suit.

JOHN QUINN,
Solicitor for Botany Worsted Mills,
31 Nassau Street,
Borough of Manhattan,
New York City.

JOHN QUINN,
PAUL KIEFFER,
Counsel.

154 District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Answer of Directors of Botany Worsted Mills.

John Quinn, Solicitor for defendant-directors of Botany Worsted Mills, 31 Nassau Street, Borough of Manhattan, New York City.
John Quinn, Paul Kieffer, of Counsel.

U. S. District Court, S. D. of N. Y. Filed May 26, 1919.

155 In the District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. DUVALL, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

Answer of the Directors of the Botany Worsted Mills.

Now come the above named defendants, James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Horace C. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney and Richard Stockton
156 and answering the bill of complaint and supplemental bill exhibited in this cause, say:

First. These defendants admit the allegations of paragraph first of the bill that the defendant Palmer is and at all times thereafter mentioned was the Alien Property Custodian, having been duly appointed to such office pursuant to the Act of Congress approved October 6, 1917 and known as the "Trading with the Enemy Act." These defendants further admit the allegations of said paragraph first of the bill that the Botany Worsted Mills is and ever since May 11, 1889 has been a corporation duly organized by and under the laws of New Jersey and that these defendants are directors of said Botany Worsted Mills.

These defendants deny that they have any knowledge or information sufficient to form a belief as to the other allegations of paragraph first of the bill.

Second. These defendants deny the allegations of paragraph second of the bill.

Third. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph third of the bill.

Fourth. These defendants admit the allegations of paragraph fourth of the bill.

Fifth. These defendants admit the allegations of paragraph fifth of the bill.

Sixth. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph sixth of the bill.

Seventh. These defendants have no knowledge, or information sufficient to form a belief as to the allegations of paragraph seventh of the bill, except that they admit that prior to February 1915
157 fourteen thousand nine hundred (14,900) shares of the capital stock of the Botany Worsted Mills stood on the books of the Botany Worsted Mills in the name of Kammgarnspinnerei Stoechr & Co., Actiengesellschaft; and that on or about February 15, 1915 ten thousand (10,000) of said fourteen thousand nine hundred (14,900) shares were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoechr & Co., Actiengesellschaft, into the name of Hans E. Stoechr as Trustee; and that on or about February 26, 1915 the remaining four thousand nine hundred (4,900) shares of said fourteen thousand nine hundred (14,900) shares were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoechr & Co., Actiengesellschaft, into the name of Max W. Stoechr, as Trustee.

Eighth. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph eighth of the bill.

Ninth. These defendants deny the allegations of paragraph ninth of the bill, except that they admit that on April 6, 1917 and December 7, 1917, respectively, the United States of America recognized that a state of war existed between the United States and the then Empire of Germany and the then Empire of Austria-Hungary; and expect also that they admit that an armistice was signed on November 11, 1918.

Tenth. These defendants deny the allegations of paragraph tenth of the bill.

Eleventh. These defendants deny the allegations of paragraph eleventh of the bill.

Twelfth. These defendants deny the allegations of paragraph twelfth of the bill.

Thirteenth. These defendants deny the allegations of paragraph thirteenth of the bill.

158 Fourteenth. These defendants admit that on or about the 20th of March 1918 Botany Worsted Mills was and now is solvent and that the Botany Worsted Mills had a large surplus and reserve fund and did not possess or deal in perishable property.

These defendants have no knowledge or information sufficient to form a belief as to the other allegations of paragraph fourteenth of the bill.

Fifteenth. These defendants admit that the terms and conditions of sale of the stock of the Botany Worsted Mills advertised to be sold by the Alien Property Custodian are substantially as alleged in paragraph fifteenth of the bill.

These defendants deny that they have any knowledge or information sufficient to form a belief as to the other allegations and conclusions of paragraph fifteenth of the bill.

Sixteenth. These defendants deny the allegations of paragraph sixteenth of the bill.

Seventeenth. These defendants deny the allegations of paragraph seventeenth of the bill.

Eighteenth. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph eighteenth of the bill.

Nineteenth. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph nineteenth of the bill.

Twentieth. These defendants deny the allegations and conclusions of paragraph twentieth of the bill.

Twenty-first. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph first of the supplemental bill.

159 Twenty-second. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph second of the supplemental bill.

Twenty-third. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph third of the supplemental bill.

As a first separate and distinct defense to the bill of complaint of the complainant herein, these defendants further allege and show to the court:

Twenty-fourth. The Botany Worsted Mills is and ever since May 11, 1889 has been a corporation duly organized by and under the laws of New Jersey. The capital stock of the Botany Worsted Mills is three million six hundred thousand dollars (\$3,600,000) and consists of thirty-six thousand (36,000) shares of the par value of one hundred dollars (\$100) each.

Twenty-fifth. These defendants were at the time of the filing of the bill herein directors of the Botany Worsted Mills and constituted its Board of Directors. These defendants were duly elected pursuant to the provisions of the law of New Jersey and of the articles of incorporation and the by laws of the Botany Worsted Mills either at adjourned annual stockholders' meetings duly and legally called.

and held or, for the purpose of filling vacancies then existing, at meetings of the board of directors of the Botany Worsted Mills duly and legally called and held. At the time of the
160 adjourned annual meetings of the stockholders of the Botany Worsted Mills, at which meetings certain of said directors were elected as aforesaid, the Alien Property Custodian, was not a stockholder of record of the Botany Worsted Mills and did not vote in person or by proxy at said meetings. The present members of the board of directors of the Botany Worsted Mills elected either at the annual meeting of its stockholders held on March 18, 1919, or for the purpose of filling a vacancy then existing, at a meeting of the board of directors of the Botany Worsted Mills duly and legally called and held, are as follows: Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Horace C. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, William J. Hellmer, Richard Stockton, William H. Folwell and Douglas I. McKay.

Twenty-sixth. These defendants have lawfully and in good faith administered the affairs of the Botany Worsted Mills as such directors in the best interests of all the stockholders of the Botany Worsted Mills.

Twenty-seventh. On or about April 5, 1918 the Alien Property Custodian, having duly and lawfully and in accordance with the provisions of the "Trading with the Enemy Act," and in particular with section 7, sub-section (c) of said Act, after investigation determined that fourteen thousand nine hundred (14,900) shares of the stock of the Botany Worsted Mills then standing of record upon the books of the Botany Worsted Mills in the name of Stoehr & Sons, Inc., belonged to, or were held for, by, or on account of, or on behalf of, or for the benefit of Kammgaruspinnerei Stoehr
161 & Co., Actiengesellschaft, an enemy or ally of enemy not holding a license granted by the President under said "Trading with the Enemy Act," duly demanded that the Botany Worsted Mills transfer to the Alien Property Custodian said fourteen thousand nine hundred (14,900) shares, and on the 24th day of February, 1919 said official seized said shares of stock and required the Botany Worsted Mills to cancel the certificates evidencing or representing said shares of stock and in lieu thereof to issue new certificates therefor in the name of A. Mitchell Palmer as Alien Property Custodian, and in so doing he expressly reserved all rights acquired under or by virtue of the requirement above mentioned. The Botany Worsted Mills on or about the 22nd day of April 1918, acting pursuant to the provisions of said "Trading with the Enemy Act," duly and legally transferred on the books of the Botany Worsted Mills said fourteen thousand nine hundred (14,900) shares to Peoples Bank and Trust Company of Passaic, New Jersey, as depositary for the Alien Property Custodian. Said fourteen thousand nine hundred (14,900) shares stood of record on the books of the Botany Worsted Mills in the name of said Peoples Bank and Trust Company, as depositary for the Alien Property Custodian,

until the 25th day of February, 1919 on which date the Botany Worsted Mills in further compliance with said requirements of said official and of the Trading with the Enemy Act, cancelled said certificates theretofore issued, representing said 14,900 shares of stock and in lieu thereof issued new certificates in the name of A. Mitchell Palmer as Alien Property Custodian. On or about March 13, 1919 the Alien Property Custodian duly demanded from stoehr & Sons, Inc., all the rights, privileges and benefits of Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, under the said contract between said Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, and Stoehr & Sons, Inc., dated February 20, 1917, and duly seized said rights, privileges and benefits, expressly reserving all rights accruing under or by virtue of any demands theretofore or thereafter made with respect to said 14,900 shares.

Twenty-eighth. Stoehr & Sons, Inc., was at the time of the filing of the bill herein and now is the holder of record on the books of the Botany Worsted Mills of five thousand six hundred and ninety (5,690) shares of stock of the Botany Worsted Mills. The Alien Property Custodian has made no demand upon the Botany Worsted Mills for the transfer of said five thousand six hundred and ninety (5,690) shares to the Alien Property Custodian, and has made to the Botany Worsted Mills no claim of enemy ownership of the said five thousand six hundred and ninety (5,690) shares, and has made no demand upon the Botany Worsted Mills of any kind whatsoever in regard to said five thousand six hundred and ninety (5,690) shares.

Twenty-ninth. The Botany Worsted Mills has not heretofore participated in any manner and does not intend to participate in the offer or advertisement for the sale of stock of the Botany Worsted Mills by the Alien Property Custodian as alleged in paragraph fourteenth of the bill, and has not participated and does not intend to participate in the publication, circulation and issuance of the terms and conditions on which said Alien Property Custodian proposes to sell the shares of stock so advertised by him as alleged in paragraph fifteenth of the bill, and has not participated and does not intend to participate in said sale as alleged in paragraph fifteenth of the bill.

163-165 Wherefore these defendants pray that the said bill of complaint and said supplemental bill be dismissed with the costs and disbursements of this suit.

JOHN QUINN,

Solicitor for the Defendants James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Horace C. Jones, Thomas F. Martin, Thomas J. Malony, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, and Richard Stockton.

31 Nassau Street, New York City.

JOHN QUINN,

PAUL KIEFFER, *Counsel.*

166 District Court of the United States for the Southern District
of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., and in Behalf of All Others Similarly Sit-
uated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Answer of Directors of Stoehr & Sons, Inc.

John Quinn, Solicitor for defendant-directors of Stoehr & Sons,
Inc., 31 Nassau Street, Borough of Manhattan, New York City.
John Quinn, Paul Kieffer, of Counsel.

U. S. District Court, S. D. of N. Y. Filed May 26, 1919.

167 In the District Court of the United States for the Southern
District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., and in Behalf of All Others Similarly Sit-
uated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW
B. DUVALL, Walter S. Jones, Thomas F. Martin, Thomas J. Ma-
loney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney,
Richard Stockton, A. Mitchell Palmer, Individually and as Alien
Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills,
Francis P. Garvan, and Paul Kieffer, Defendants.

Answer of Directors of Stoehr & Sons, Inc.

Now come the above named defendants, James N. Wallace, An-
drew B. Duvall, Francis P. Garvan and Paul Kieffer, and
168 answering the bill of complaint and supplemental bill
exhibited in this cause, say:

First. These defendants deny that they have any knowledge or
information sufficient to form a belief as to whether Max W. Stoehr
is or has been ever since 1910 a citizen of the United States of Amer-
ica or of the State of New York or an actual resident of the City and
County of New York in said state. These defendants admit that the
defendant A. Mitchell Palmer is a citizen and resident of the City
of Stroudsburg, State of Pennsylvania. Except as in this paragraph

first expressly denied, these defendants admit all of the other allegations of paragraph first of the bill.

Second. These defendants deny the allegations of paragraph second of the bill.

Third. These defendants admit that on or about February 19, 1917, one Hans E. Stoeck, who died prior to the commencement of this action, and the complainant, Max W. Stoeck, and one George G. Rohlig, who died prior to the commencement of this action, became the holders of record on the books of Stoeck & Sons, Inc., as voting trustees of all the capital stock of Stoeck & Sons, Inc., issued and outstanding, namely twenty-five hundred (2,500) shares, and that said stock still stands on the books of Stoeck & Sons, Inc., in the names of said three voting trustees. These defendants admit that on or about February 19, 1917, said three named persons as voting trustees executed and caused to be issued to the complainant a voting trust certificate representing forty-four and sixty-five one hundredths (44.65) shares of said stock, which certificate is still outstanding in the name of the complainant. These defendants admit that since on or about February 17, 1917 Stoeck & Sons, Inc., has been a domestic corporation incorporated under the laws of New York.

169 Except as in this paragraph third expressly admitted, these defendants deny any knowledge or information sufficient to form a belief as to the other allegations of paragraph third of the bill.

Fourth. These defendants admit the allegations of paragraph fourth of the bill.

Fifth. These defendants admit the allegations of paragraph fifth of the bill.

Sixth. These defendants admit the allegations of paragraph sixth of the bill.

Seventh. These defendants admit the allegations of paragraph seventh of the bill that prior to February 15, 1915, fourteen thousand nine hundred (14,900) shares of the capital stock of the Botany Worsted Mills stood on the books of said Botany Worsted Mills in the name of Kammgarnspinnerei Stoeck & Co. Actiengesellschaft; and that on or about February 15, 1915, ten thousand (10,000) of said fourteen thousand nine hundred (14,900) shares of stock were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoeck & Co., Actiengesellschaft, into the name of Hans E. Stoeck, as trustee; and that on or about February 26, 1915, the remaining four thousand nine hundred (4,900) shares of said fourteen thousand nine hundred (14,900) shares were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoeck & Co. Actiengesellschaft into the name of Max W. Stoeck, as trustee. Except as expressly admitted in this paragraph number seventh,

these defendants deny the other allegations of paragraph seventh of the bill.

Eighth. These defendants deny the allegations of paragraph eighth of the bill.

Ninth. These defendants admit that on April 6, 1917, and December 7, 1917, respectively, the United States of America
170 recognized that a state of war existed between the United States of America and the then Empire of Germany and the then Empire of Austria-Hungary. These defendants also admit that an armistice was signed on November 11, 1918. Except as in this paragraph number ninth expressly admitted, these defendants deny all of the allegations of paragraph ninth of the bill.

Tenth. These defendants deny the allegations of paragraph tenth of the bill.

Eleventh. These defendants deny the allegations of paragraph eleventh of the bill.

Twelfth. These defendants deny any knowledge or information sufficient to form a belief as to the allegations of paragraph twelfth of the bill.

Thirteenth. These defendants deny the allegations of paragraph thirteenth of the bill.

Fourteenth. These defendants admit that on or about the 20th of March, 1918, Stoehr & Sons Inc. was and now is solvent and has a substantial undivided surplus, and that Stoehr & Sons Inc. does not possess or deal in perishable property. Except as in this paragraph number fourteenth expressly admitted, these defendants deny all of the allegations of paragraph fourteenth of the bill.

Fifteenth. These defendants admit that the terms and conditions of sale of the stock of the Botany Worsted Mills advertised to be sold by the Alien Property Custodian are substantially as alleged in paragraph fifteenth of the bill. Except as in this paragraph fifteenth expressly admitted, these defendants deny all of the allegations of paragraph fifteenth of the bill.

Sixteenth. These defendants deny the allegations of paragraph sixteenth of the bill.

171 Seventeenth. These defendants deny the allegations of paragraph seventeenth of the bill.

Eighteenth. These defendants have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph eighteenth of the bill.

Nineteenth. These defendants deny the allegations of paragraph nineteenth of the bill.

Twentieth. These defendants deny the allegations of paragraph twentieth of the bill.

Twenty-first. These defendants have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph first of the supplemental bill.

Twenty-second. These defendants have no knowledge or information sufficient to form a belief as to the allegations of paragraph second of the supplemental bill.

Twenty-third. These defendants have no knowledge or information to form a belief as to the allegations of paragraph third of the supplemental bill.

As a first separate and distinct defense to the bill of complaint of the complainant herein, these defendants further allege and show to the Court:

Twenty-fourth. Stoehr & Sons Inc. is a corporation organized under the laws of New York with a capital stock of two hundred and fifty thousand dollars (\$250,000), consisting of twenty-five hundred (2,500) shares of the par value of one hundred dollars (\$100) each. These defendants were at the time of the filing of the bill directors of Stoehr & Sons Inc. Francis P. Garvan was a director of Stoehr & Sons Inc. at the time of the filing of the bill and continued to act as such director until March 10, 1919, on which date he resigned as a member of the board of directors. On March 28, 1919, Douglas I. McKay was elected a director of Stoehr & Sons Inc. in the place of Francis P. Garvan. James N. Wallace, Andrew B. Duvall, Douglas I. McKay and Paul Kieffer constitute the present board of directors of Stoehr & Sons Inc. The said directors were duly and legally elected to the office of director at meetings of the board of directors of Stoehr & Sons Inc. duly and legally called and held by the directors, who in turn were duly and legally elected by the stockholders of the said Company. The said directors from the time of their election to the office of director of said Company up to the present time, have duly and lawfully administered the affairs of Stoehr & Sons Inc. in accordance with law and the articles of incorporation and the bylaws of said Company and in the best interests of said Company and of all its stockholders.

Stoehr & Sons Inc. is the owner and holder of record upon the books of the Botany Worsted Mills of five thousand six hundred and ninety (5,690) shares of the stock of the Botany Worsted Mills. Stoehr & Sons Inc. has in its possession certificates representing twelve hundred and ninety (1,290) of said five thousand six hundred ninety (5,690) shares, and was therefore in a position to deliver the same upon a sale thereof; but Stoehr & Sons Inc. has not in its possession the certificates representing the remainder, to wit, four thousand four hundred (4,400) shares out of said five thousand six hundred ninety (5,690) shares.

Twenty-fifth. Upon information and belief the Alien Property Custodian, prior to the commencement of this suit, pursuant to the provisions of the "Trading with the Enemy Act," as amended, and

pursuant to the executive orders and presidential proclamations issued thereunder, duly and lawfully advertised to be sold at public auction twenty-four thousand four hundred and ten (24,410) shares of the stock of the Botany Worsted Mills held by the Alien Property Custodian. Said twenty-four thousand four hundred and ten (24,410) shares do not include the said five thousand six hundred and ninety (5,690) shares of stock, nor any part of said shares.

Twenty-sixth. These defendants as directors of Stoechr & Sons, Inc., by a resolution duly adopted at a regular meeting of said board voted to offer for sale, at the same time and place and upon the same terms and conditions as said twenty-four thousand four hundred and ten (24,410) shares, one thousand two hundred ninety (1,290) shares out of said total of five thousand six hundred ninety (5,690) shares of stock of Botany Worsted Mills owned by said Stoechr & Sons, Inc. and standing of record in its name on the books of Botany Worsted Mills. Stoechr & Sons, Inc., thereupon joined in offering for sale as aforesaid one thousand two hundred ninety (1,290) shares with the offer for sale as aforesaid by the Alien Property Custodian of said said twenty-four thousand four hundred ten (24,410) shares to be sold as one parcel, making twenty-five thousand seven hundred (25,700) shares. Except as in this paragraph

number twenty-sixth expressly stated, neither Stoechr & Sons, Inc. nor the Alien Property Custodian has offered for sale or taken any steps towards selling or offering for sale said five thousand six hundred ninety (5,690) shares of stock of Botany Worsted Mills owned by Stoechr & Sons, Inc., or any part thereof.

As a second separate and distinct defense to the allegations of the bill of complaint herein, these defendants allege and show to the court:

Twenty-seventh. Prior to February 15, 1915, Kammgarnspinnerei Stoechr & Co., Actiengesellschaft of Plagwitz, Leipzig, Germany, a corporation organized under the laws of the then Empire of Germany, was the owner in fact and of record on the books of the Botany Worsted Mills of fourteen thousand nine hundred (14,900) shares of stock of the Botany Worsted Mills.

Twenty-eighth. On or about February 15, 1915, there was transferred ten thousand (10,000) out of said fourteen thousand nine hundred (14,900) shares on the books of the Botany Worsted Mills, to Hans E. Stoechr as trustee for said Kammgarnspinnerei Stoechr & Co., Actiengesellschaft. On or about February 26, 1915, there was transferred the remaining four thousand nine hundred (4,900) of said shares on the books of the said Botany Worsted Mills to Max W. Stoechr as trustee for Kammgarnspinnerei Stoechr & Co., Actiengesellschaft.

175 Twenty-ninth. On or about February 16, 1917, Stoechr & Sons, Inc., was organized under the laws of New York with an authorized capital stock of two hundred and fifty thousand dol-

lars (\$250,000), consisting of twenty-five hundred (2,500) shares of the par value of one hundred dollars (\$100) each. The entire capital stock of Stoehr & Sons, Inc. was issued for the business property, good will, firm name and other assets of Stoehr & Sons, a partnership theretofore existing between the complainant Max W. Stoehr and Eduard Stoehr, who was the father of the complainant and who was a German subject residing in Germany, Hans E. Stoehr, who was a brother of the complainant and who was a German subject and Georg Stoehr, who was a brother of the complainant and who was a German subject residing in Germany.

Thirtieth. On or about February 20, 1917, an instrument was signed by the name of Kammgarnspinnerei Stoehr & Co., Actiengesellschaft by Hans E. Stoehr, and in the name of Stoehr & Sons, Inc. by George G. Roehlig, Vice-President, a copy of which instrument is annexed to the complaint and marked Complainant's Exhibit 1. The subject matter of said instrument was the said fourteen thousand nine hundred (14,900) shares.

Thirty-first. Said fourteen thousand nine hundred (14,900) shares were on or about February 20, 1917, transferred on the books of the Botany Worsted Mills from the names of Hans E. Stoehr, trustee, and Max W. Stoehr, trustee, respectively, as aforesaid, to the name of Stoehr & Sons, Inc., but there was no delivery of the certificates representing said fourteen thousand nine hundred (14,900) shares endorsed either in blank or to a specified person or persons appearing by the certificate to be the owner or owners of the shares of stock represented thereby from said Hans E. Stoehr

176 and said Max W. Stoehr as such trustee, to Stoehr & Sons, Inc., and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and these defendants allege that the title to said fourteen thousand nine hundred (14,900) shares was not transferred to Stoehr & Sons, Inc., pursuant to the provisions of Chapter 191 of the Laws of 1916 of New Jersey, said Act being entitled, "An Act to Make Uniform the Law of Transfer of Shares of stock in corporations," approved March 18, 1916.

Thirty-second. Upon information and belief, on or about April 5, 1918, the Alien Property Custodian, having duly and lawfully and in accordance with the provisions of the "Trading with the Enemy Act" and in particular with the provisions of Section 7, subsection (c) of said Act, after investigation determined that said fourteen thousand nine hundred (14,900) shares of stock of the Botany Worsted Mills hereinabove referred to belonged to or were held for, by, or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President under said "Trading with the Enemy Act," duly demanded that the Botany Worsted Mills transfer to said Alien Property Custodian

todian said fourteen thousand nine hundred (14,900) shares of stock, and on the 24th day of February, 1919, said official seized said shares of stock and required the Botany Worsted Mills to cancel the certificates evidencing or representing said shares of stock and in lieu thereof to issue new certificates therefor in the name of A. Mitchell Palmer as Alien Property Custodian, and in so doing he expressly reserved all rights acquired under or by virtue of
177 the requirement above mentioned. Said fourteen thousand nine hundred (14,900) shares were on or about the 22nd of April, 1918, duly transferred on the books of the Botany Worsted Mills to Peoples Bank and Trust Company of Passaic, New Jersey, as depositary for said Alien Property Custodian. Said fourteen thousand nine hundred (14,900) shares stood of record on the books of the Botany Worsted Mills in the name of Peoples Bank and Trust Company as depositary for the Alien Property Custodian, until the 25 day of February, 1919, on which date the Botany Worsted Mills in further compliance with said requirements of said official and of the Trading with the Enemy Act, cancelled said certificates theretofore issued, representing said 14,900 shares of stock and in lieu thereof issued new certificates in the name of A. Mitchell Palmer as Alien Property Custodian. On or about March 13, 1919, the Alien Property Custodian duly demanded from Stoeck & Sons, Inc., all the rights, privileges and benefits of Kammgarnspinnerei Stoeck & Company, Actiengesellschaft, under the said contract between the Kammgarnspinnerei Stoeck & Company, Actiengesellschaft, and Stoeck & Sons, Inc., dated February 20, 1917, and duly seized said rights, privileges and benefits, expressly reserving all rights accruing under or by virtue of any demands theretofore or thereafter made with respect to said 14,900 shares.

Thirty-third. On the declaration that a state of war existed between the United States of America and the then Empire of Germany, all obligations and contractual relations between citizens of the United States of America and the subjects of the then Empire of Germany, were dissolved and abrogated, and to perform during the war any part of said contract purporting to be effected or created by said instrument would involve intercourse with the enemy
178 and would be illegal, and upon the declaration of war as aforesaid the said contract became and was illegal and became void and was abrogated.

Thirty-fourth. If any contract or agreement existed between Kammgarnspinnerei Stoeck & Co., Actiengesellschaft, and Stoeck & Sons, Inc., respecting said fourteen thousand nine hundred (14,900) shares of stock, the recognition by the United States of America on April 6, 1917, of the existence of a state of war between the United States of America and the then Empire of Germany dissolved said contract between said parties, for the reason among others that any performance of said contract or the continuance of said contract would involve trading and intercourse with the enemy.

and said contract upon the declaration of war as aforesaid became illegal and void and was abrogated.

Wherefore these defendants pray that the said Bill of Complaint and Supplemental Bill be dismissed with the costs and disbursements of this suit.

JOHN QUINN,
*Solicitor for Defendants James N.
Wallace, Andrew B. Durrall,
Francis P. Garvan, and Paul
Kieffer.*

31 Nassau Street, Borough of Manhattan, New York City.

JOHN QUINN,
PAUL KIEFFER,
Counsel.

179 District Court of the United States for the Southern District
of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., and in Behalf of All Others Similarly Sit-
uated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Answer of Stoechr & Sons, Inc.

John Quinn, Solicitor for defendant, Stoechr & Sons, Inc., 31 Nas-
sau Street, Borough of Manhattan, New York City.

John Quinn, Paul Kieffer, of Counsel.

U. S. District Court, S. D. of N. Y. Filed May 26, 1919.

180 In the District Court of the United States for the Southern District of New York.

No. 2.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

Answer of Stoehr & Sons, Inc.

Now comes the above named defendant, Stoehr & Sons Inc., and answering the bill of complaint and Supplemental Bill exhibited in this cause, says:

First. This defendant denies that it has any knowledge or information sufficient to form a belief as to whether Max W. Stoehr is or has been ever since 1910 a citizen of the United States of America or of the State of New York or an actual resident of the City and County of New York in said state. This defendant admits that the defendant A. Mitchell Palmer is a citizen and resident of the City of Strudsburg, State of Pennsylvania. Except as in this paragraph first expressly denied, this defendant admits all of the other allegations in paragraph first of the bill.

Second. This defendant denies the allegations contained in paragraph second of the bill.

Third. This defendant admits that on or about February 19, 1917, one Hans E. Stoehr, who died prior to the commencement of this action, and the complainant, Max W. Stoehr, and one George G. Rohlig, who died prior to the commencement of this action, became the holders of record on the books of this defendant as voting trustees of all the capital stock of this defendant issued and outstanding, namely twenty-five hundred (2,500) shares, and that said stock still stands on the books of this defendant in the names of said three voting trustees. This defendant admits that on or about February 19, 1917 said three named persons as voting trustees executed and caused to be issued to the complainant a voting trust certificate representing forty-four and sixty-five one hundredths (44.65) shares of said stock, which certificate is still outstanding in the name of the complainant. This defendant admits that since on or about February 17, 1917 it has been a domestic corporation incorporated under the laws of the

182 State of New York. Except as in this paragraph third expressly admitted, this defendant denies any knowledge or information sufficient to form a belief as to the other allegations of paragraph third of the bill.

Fourth. This defendant admits the allegations of paragraph fourth of the bill.

Fifth. This defendant admits the allegations of paragraph fifth of the bill.

Sixth. This defendant admits the allegations of paragraph sixth of the bill.

Seventh. This defendant admits the allegations contained in paragraph seventh of the bill that prior to February 15, 1915, fourteen thousand nine hundred (14,900) shares of the capital stock of the Botany Worsted Mills stood on the books of said Botany Worsted Mills in the name of Kammgarnspinnerei Stoechr & Co. Actiengesellschaft; and that on or about February 15, 1915 ten thousand (10,000) of said fourteen thousand nine hundred (14,900) shares of stock were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoechr & Co., Actiengesellschaft, into the name of Hans E. Stoechr, as Trustee; and that on or about February 26, 1915, the remaining four thousand nine hundred (4,900) shares of said fourteen thousand nine hundred (14,900) shares were transferred on the books of the Botany Worsted Mills from the name of Kammgarnspinnerei Stoechr & Co. Actiengesellschaft into the name of Max W. Stoechr, as Trustee. Except as expressly admitted in this paragraph number seventh, this defendant denies the other allegations of paragraph seventh of the bill.

Eighth. This defendant denies the allegations of paragraph eighth of the bill.

183 Ninth. This defendant admits that on April 6, 1917 and December 7, 1917, respectively, the United States of America recognized that a state of war existed between the United States of America and the then Empire of Germany and the then Empire of Austria-Hungary. This defendant also admits that an armistice was signed on November 11, 1918. Except as in this paragraph number ninth expressly admitted, this defendant denies all of the allegations of paragraph ninth of the bill.

Tenth. This defendant denies the allegations of paragraph tenth of the bill.

Eleventh. This defendant denies the allegations of paragraph eleventh of the bill.

Twelfth. This defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraph twelfth of the bill.

Thirteenth. This defendant denies the allegations of paragraph thirteenth of the bill.

Fourteenth. This defendant admits that on or about the 20th day of March, 1918, it was and now is solvent and has a substantial undivided surplus, and that this defendant does not possess or deal in perishable property. Except as in this paragraph number fourteenth expressly admitted, this defendant denies all of the allegations of paragraph fourteenth of the bill.

Fifteenth. This defendant admits that the terms and conditions of sale of the stock of the Botany Worsted Mills advertised to be sold by the Alien Property Custodian are substantially as alleged in paragraph fifteenth of the bill. Except as in this paragraph fifteenth expressly admitted, this defendant denies all of the allegations of paragraph fifteenth of the bill.

184 Sixteenth. This defendant denies the allegation of paragraph sixteenth of the bill.

Seventeenth. This defendant denies the allegation of paragraph seventeenth of the bill.

Eighteenth. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph eighteenth of the bill.

Nineteenth. This defendant denies the allegations of paragraph nineteenth of the bill.

Twentieth. This defendant denies the allegations of paragraph twentieth of the bill.

Twenty-first. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph first of the supplemental bill.

Twenty-second. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph second of the supplemental bill.

Twenty-third. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph third of the supplemental bill.

As a first separate and distinct defense to the bill of complaint herein, this defendant further alleges and shows to the Court:

185 Twenty-fourth. Stoeck & Sons Inc. is a corporation organized under the laws of New York with a capital stock of two hundred and fifty thousand dollars (\$250,000), consisting of twenty-five hundred (2,500) shares of the par value of one hundred dollars (\$100) each. James N. Wallace, Andrew B. Duvall and Paul Kieffer were at the time of the filing of the bill and now are directors of Stoeck & Sons Inc. Francis P. Garvan was a director

of Stoehr & Sons Inc., at the time of the filing of the bill and continued to act as such director until March 10, 1919, on which date he resigned as a member of the board of directors. On March 28, 1919, Douglas I. McKay was elected a director of Stoehr & Sons Inc. in the place of Francis P. Garvan. James N. Wallace, Andrew B. Duvall, Douglas I. McKay and Paul Kieffer constitute the present board of directors of Stoehr & Sons Inc. Said directors were duly and legally elected to the office of director at meetings of the board of directors of Stoehr & Sons Inc. duly and legally called and held by the directors, who in turn were duly and legally elected by the stockholders of the said Company. The said directors of Stoehr & Sons Inc. from the time of their election to the office of director of said Company up to the present time have duly and lawfully administered the affairs of Stoehr & Sons Inc. in accordance with law and the articles of incorporation and the bylaws of said company and in the best interests of said Company and of all its stockholders.

Stoehr & Sons Inc. is the owner and holder of record upon the books of the Botany Worsted Mills of five thousand six hundred and ninety (5,690) shares of the stock of the Botany Worsted Mills. Stoehr & Sons Inc. has in its possession certificates representing twelve hundred and ninety (1,290) of said five thousand six hundred ninety (5,690) shares, and was therefore in a position to deliver the same upon a sale thereof; but Stoehr & Sons Inc. has not in its possession the certificates representing the remainder, to wit, four thousand four hundred (4,400) shares out of said five thousand six hundred ninety (5,690) shares.

Twenty-fifth. Upon information and belief the Alien Property Custodian, prior to the commencement of this suit, pursuant to the provisions of the "Trading with the Enemy Act," as amended, and pursuant to the executive orders and presidential proclamations issued thereunder, duly and lawfully advertised to be sold at public auction twenty-four thousand four hundred and ten (24,410) shares of the stock of the Botany Worsted Mills held by the Alien Property Custodian. Said twenty-four thousand four hundred and ten (24,410) shares do not include the said five thousand six hundred and ninety (5,690) shares of stock, nor any part of said shares.

Twenty-sixth. Said board of directors of Stoehr & Sons Inc., by a resolution duly adopted at a regular meeting of said board voted to offer for sale, at the same time and place and upon the same terms and conditions as said twenty-four thousand four hundred and ten (24,410) shares, one thousand two hundred ninety (1,290) shares out of said total of five thousand six hundred ninety (5,690) shares of stock of Botany Worsted Mills owned by said Stoehr & Sons Inc. and standing of record in its name on the books of Botany Worsted Mills. Stoehr & Sons Inc. thereupon joined in offering for sale as aforesaid said one thousand two hundred ninety (1,290) shares with the offer for sale as aforesaid by the Alien Property Custodian of said twenty-four thousand four hundred ten (24,410) shares to be sold as one parcel, making twenty-five thousand seven

hundred (25,700) shares. Except as in this paragraph number
twenty-sixth expressly stated, neither Stoehr & Sons Inc.
187 nor the Alien Property Custodian has offered for sale or
taken any steps towards selling or offering for sale said five
thousand six hundred ninety (5,690) shares of stock of Botany
Worsted Mills owned by Stoehr & Sons Inc. or any part thereof.

As a second separate and distinct defense to the allegations of
the bill of complaint herein, this defendant alleges and shows to the
Court:

Twenty-seventh. Prior to February 15, 1915, Kammgarnspinnerei
Stoehr & Co., Actiengesellschaft of Plagwitz, Leipzig, Germany, a
corporation organized under the laws of the then Empire of Ger-
many, was the owner in fact and of record on the books of the
Botany Worsted Mills of fourteen thousand nine hundred (14,900)
shares of stock of the Botany Worsted Mills.

Twenty-eighth. On or about February 15, 1915, there was trans-
ferred ten thousand (10,000) out of said fourteen thousand nine
hundred (14,900) shares on the books of the Botany Worsted Mills,
to Hans E. Stoehr as Trustee for said Kammgarnspinnerei Stoehr
& Co., Actiengesellschaft. On or about February 26, 1915, there
was transferred the remaining four thousand nine hundred (4,900)
of said shares on the books of the said Botany Worsted Mills to Max
W. Stoehr, as Trustee for Kammgarnspinnerei Stoehr & Co., Actien-
gesellschaft.

188 Twenty-ninth. On or about February 16, 1917 Stoehr &
Sons Inc. was organized under the laws of New York with an
authorized capital stock of two hundred and fifty thousand dollars
(\$250,000), consisting of twenty-five hundred (2,500) shares of the
par value of one hundred dollars (\$100) each. The entire capital
stock of Stoehr & Sons Inc. was issued for the business property, good
will, firm name and other assets of Stoehr & Sons, a partnership
theretofore existing between the complainant Max W. Stoehr and
Eduard Stoehr, who was the father of the complainant and who was
a German subject residing in Germany, Hans E. Stoehr, who was a
brother of the complainant and who was a German subject, and
Georg Stoehr, who was a brother of the complainant and who was a
German subject residing in Germany.

Thirtieth. On or about February 20, 1917 an instrument was
signed by the name of Kammgarnspinnerei Stoehr & Co., Actiengesellschaft by Hans E. Stoehr and by the name of Stoehr & Sons Inc.
by George G. Roehlig, Vice-President, a copy of which instrument is
annexed to the complaint and marked Complainant's Exhibit 1.
The subject matter of said instrument was the said fourteen thousand
nine hundred (14,900) shares.

Thirty-first. Said fourteen thousand nine hundred (14,900)
shares were on or about February 20, 1917 transferred on the books
of the Botany Worsted Mills from the names of Hans E. Stoehr,

Trustee, and Max W. Stochr, Trustee, respectively, to the name of Stochr & Sons Inc., but there was no delivery of the certificates representing said fourteen thousand nine hundred (14,900) shares endorsed either in blank or to a specified person or persons appearing by the certificate to be the owner or owners of the shares of stock represented thereby from said Hans E. Stochr and said Max W. 180 Stochr as such Trustees, to Stochr & Sons Inc., and no delivery of the certificates representing the same with any separate document or documents containing a written assignment or assignments of said certificates and with no power of attorney to sell, assign or transfer the same either in blank or otherwise, and this defendant alleges that the title to said fourteen thousand nine hundred (14,900) shares of stock was not transferred to Stochr & Sons Inc. pursuant to the provisions of Chapter 191 of the Laws of 1916 of New Jersey, said Act being entitled, "An Act to make Uniform the Law of Transfer of Shares of Stock in Corporations," approved March 18, 1916.

Thirty-second. Upon information and belief, on or about April 5, 1918, the Alien Property Custodian, having duly and lawfully and in accordance with the provisions of the "Trading with the Enemy Act" and in particular with the provisions of Section 7, subsection (c) of said Act, after investigation determined that said fourteen thousand nine hundred (14,900) shares of stock of the Botany 190 Worsteds Mills hereinabove referred to belonged to or were held for, by, or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President under said "Trading with the Enemy Act," duly demanded that the Botany Worsteds Mills transfer to said Alien Property Custodian said fourteen thousand nine hundred (14,900) shares of stock and on the 24th day of February 1919 said official seized said shares of stock and required the Botany Worsteds Mills to cancel the certificates evidencing or representing said shares of stock and in lieu thereof to issue new certificates therefor in the name of A. Mitchell Palmer as Alien

Property Custodian, and in so doing he expressly reserved all 190 rights acquired under or by virtue of the requirement above mentioned. Said fourteen thousand nine hundred (14,900) shares were on or about the 22nd of April, 1918, duly transferred on the books of the Botany Worsteds Mills to Peoples Bank and Trust Company of Passaic, New Jersey, as depositary for said Alien Property Custodian. Said fourteen thousand nine hundred (14,900) shares stood of record on the books of the Botany Worsteds Mills in the name of Peoples Bank and Trust Company as depositary for the Alien Property Custodian, until the 25th day of February 1919 on which date the Botany Worsteds Mills in further compliance with said requirements of said official and of the Trading with the Enemy Act, cancelled said certificates theretofore issued, representing said 14,900 shares of stock and in lieu thereof issued new certificates in the name of A. Mitchell Palmer as Alien Property Custodian.

On or about March 13, 1919 the Alien Property Custodian duly demanded from Stochr & Sons Inc. all the rights, privileges and

benefits of Kammgarnspinnerei Stoeck & Company, Actiengesellschaft, under the said contract between said Kammgarnspinnerei Stoeck & Company, Actiengesellschaft, and Stoeck & Sons Inc., dated February 20, 1917, and duly seized said rights, privileges and benefits, expressly reserving all rights accruing under or by virtue of any demands theretofore or thereafter made with respect to said 14,900 shares.

Thirty-third. On the declaration that a state of war existed between the United States of America and the then Empire of Germany, all obligations and contractual relations between citizens of the United States of America and the then Empire of Germany, were dissolved and abrogated, and to perform during the war any part of said contract purporting to be effected or created by said instrument would involve intercourse with the enemy and would be illegal, and upon the declaration of war as aforesaid the said contract became and was illegal and became void and abrogated.

Thirty-fourth. If any contract or agreement existed between Kammgarnspinnerei Stoeck & Co., Actiengesellschaft, and Stoeck & Sons Inc. respecting said fourteen thousand nine hundred (14,900) shares of stock, the recognition by the United States of America on April 6, 1917 of the existence of a state of war between the United States of America and the then Empire of Germany dissolved said contract between said parties, for the reason among others that any performance of said contract or the continuance of said contract would involve trading and intercourse with the enemy, and said contract upon the declaration of war as aforesaid became illegal and void and was abrogated.

Wherefore this defendant prays that the said Bill of Complaint and Supplemental Bill be dismissed with the cost and disbursements of this suit.

JOHN QUINN,

Solicitor for Defendant Stoeck & Sons, Inc.

31 Nassau Street, Borough of Manhattan, New York City.

JOHN QUINN,
PAUL KIEFFER,
Of Counsel.

192 *Statement of evidence lodged with me this Aug. 23-1920.*
ALEX. GILCHRIST, JR.,
Clerk.

E. 15-329.

In the District Court of the United States for the Southern
District of New York.

MAX W. STOHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., and in Behalf of All Others Similarly Sit-
uated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUH, ANDREW
B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Ma-
loney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney,
Richard Stockton, A. Mitchell Palmer, Individually and as Alien
Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills,
Francis P. Garvin, and Paul Kieffer, Defendants.

*Narrative Statement of the Proceedings and of the Evidence
under Equity Rule Seventy-five.*

Be it remembered, that the above-entitled cause came on for trial
before the Honorable Learned Hand, one of the Justices of this
Court, on the 27th day of January, 1920, on the 28th day of Janu-
ary, 1920, on the 30th day of January, 1920, on the 21st day of
February, 1920, on the 27th day of February, 1920, and on the 3rd
day of March, 1920; thereupon, the following proceedings were had:

Appearances:

Valentine Taylor, solicitor for plaintiff, by Louis Marshall and
Louis J. Vorhaus, counsel.

John Quinn, solicitor for defendant Stoehr & Sons, Inc., and for
defendant directors of Stoehr & Sons, Inc., and for defendant Botany
Worsted Mills and defendant directors of Botany Worsted Mills, by
John Quinn, counsel.

Francis G. Caffey, solicitor for defendant Francis P. Garvin in-
dividually and as Alien Property Custodian, by George L. Ingra-
ham, Lee C. Bradley, and W. H. Sadler, counsel.

Francis G. Caffey, solicitor for defendant A. Mitchell Palmer, by
George L. Ingraham, Lee C. Bradley and W. H. Sadler, counsel.

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MAX W. STOEHR, the plaintiff, a witness in his own behalf, being duly sworn, testified as follows:

Direct examination.

By Mr. Vorhaus:

I am the plaintiff in this action. For the past year and a half or two years I have resided in the City of New York. Prior to that time and continuously since 1907, I resided in Passaic, New Jersey. I came to this country October 15, 1900. I have my certificate of naturalization here. (The witness produces his Certificate of Naturalization.) I became a naturalized citizen on May 25, 1911 in the Court of Common Pleas, in Paterson, New Jersey.

My brother, Hans E. Stoehr, in 1902, I think, took his definite residence in this country; he had been here once prior to that in 1890. I do not know exactly when, but he came here for the second time in 1902, intending to make his residence in this country and he lived here from 1902 until he died on March 18, 1918. He applied for citizenship; I do not know exactly when, but I know he did apply for citizenship. He took out his first papers. He then moved from New Jersey to New York, and he applied for his second papers, but he had in the meantime moved to New York and the five year limit had expired, so he could not apply for his second papers, but he had to apply for his first papers the second time.

By the Court: When was that?

A. That was in 1913, I think or the beginning of 1914.

The Witness (resuming): I am thirty-seven years of age. My brother, was, when he died, in his 41st year. He was married
194 and living here with his family since 1902, his child being American-born, and I am living in this country with my family.

Prior to February 17, 1917, the firm of Stoehr & Sons was a partnership, composed of Eduard Stoehr, and Georg Stoehr, as European partners, and Hans Stoehr and Max Stoehr, as American partners. Eduard Stoehr was my father; he is 74 years of age. Georg is a brother, about seven years older than I am. Stoehr & Sons, as a co-partnership, were engaged in the business of dealing with securities and textiles, and also with textiles themselves; it bought raw wool and sold raw wool and bought industrial papers, textile papers; it transacted business with the Botany Worsted Mills, dealing in Botany Worsted Mills stock and dealing also in raw materials for the Botany Worsted Mills.

At this point there was a colloquy between Court and the counsel, representing all the parties with a view of simplifying the record and agreeing upon the number of shares of the Botany Worsted Mills standing of record in the name of Stoehr & Sons, a co-partnership, whereupon Mr. Quinn, in behalf of the defendant, made the following statement:

"Mr. Quinn: Stoehr & Sons, the partnership were stockholders of record on the books of Botany Company prior to February 20, 1917, in the amount of 5,690 shares."

"Mr. Marshall: We will accept that statement."

The Witness: That figure accords with my recollection; that was part of the assets; that is the 5,690 shares were part of the assets of Stoehr & Sons as a partnership. I could not say how many of those shares of stock were actually in this country on February 17, 1917; nor how many of the certificates; the certificates in this country represented approximately 1,290 shares, and the rest of the certificates of that 5,690 were in Germany, as far as I know. So far as I know they were deposited in the Deutsche Bank in Leipzig, Germany. That is only recollection. I do not know how many of these certificates were in this country. I take the figures of 1,290 shares as being correct.

The Court: They all agree to that.

Thereupon Mr. Vorhaus in behalf of the plaintiff offered in evidence the certificate of incorporation of Stoehr & Sons, Incorporated, contained in the minute book of said company, which was admitted in evidence and marked Plaintiff's Exhibit No. 1; also a certain waiver of notice and minutes of the first meeting of stockholders and incorporators of said Company, which was allowed in evidence and marked Plaintiff's Exhibit No. 2, and by permission of the Court copies of said documents were substituted for the record in this case.

The Court: Now the offer, I suppose, is annexed to those minutes?

Mr. Quinn: The offer is there.

The Court: The practice ordinarily is to annex the offer.

Mr. Vorhaus: They are together here, the offer and the bill of sale.

Mr. Bradley: We object to the offer on the ground it purports to be signed by Stoehr & Sons, but there is no authority shown on the part of the European partners, Eduard Stoehr and Georg Stoehr, to the making of any such offer, and the offer includes the conveyance of all the assets of the partnership.

The Court: Well, without the consent of all the partners it would not be valid, but I think I will take it, subject to further proof.

Mr. Quinn: If that meant anything it worked a dissolution of the partnership under the law.

The Court: It probably did, but if all the partners united it would be valid. It is quite clear without the knowledge of the other partners it would not be a valid conveyance.

Mr. Vorhaus: It is not foreclosing on us, your Honor.

The Court: Would it be your proposition that two partners could sell out the assets of the firm?

Mr. Marshall: So long as there was no objection.

The Court: But in the absence of ratification it would not be valid?

Mr. Marshall: The absence of objection would be ratification.

The Court: Not at all. If they knew about it and did not state any objection, that would be ratification.

Mr. Vorhaus: That includes the offer of February 19th and also the bill of Sale.

Mr. Bradley: We object to the Bill of Sale, if the Court please, on each of the grounds mentioned in regard to the offer itself.

197 The Court: I will overrule the objection.

The offer and bill of sale by Stoehr & Sons, the partnership, to Stoehr & Sons, Inc., dated February 19, 1917, were admitted in evidence and marked plaintiff's Exhibit No. 3.

Mr. Ingraham: There is no individual signature of the copartnership?

Mr. Vorhaus: No, it is signed Stoehr & Sons.

The Court: Who signed it, Mr. Stoehr?

Q. I will show him the signature, Judge, and ask him to state who signed that. Will you please so state, Mr. Stoehr?

A. I think this is the signature of Hans E. Stoehr.

By the Court:

Q. Do you know it?

A. Yes, sir.

By Mr. Vorhaus:

Q. That is your brother that is now dead?

A. Yes, sir.

The Witness: Yes, it is the same signature, Hans E. Stoehr; I witnessed it. The signature, Max W. Stoehr, is my signature.

By the Court (addressing the witness): You were given eight shares and Mr. de Liagre got one share?

A. The stock was issued in the same part as the partners had interest in the copartnership; that is, each partner in the firm of Stoehr & Sons received and receipted for his interest in stock in the same proportion as his interest formerly was in the partnership.

Mr. Quinn: Here are the exact facts. You may verify by the Books. I will give them in three columns. The first column

198 is the number of the certificates, the second column is the issuee, and the third is the number of shares.

Certificate No. 1, Max W. Stoehr	1875
Certificate No. 2, Hans E. Stoehr	357.14
Certificate No. 3, Max W. Stoehr	223.21
Certificate No. 4, Max W. Stoehr	41.65
Total	<hr/> 2,500.00

Those shares were on the same day transferred to Hans E. Stoechr, the whole 2,500, Max W. Stoechr and George Roehlig, as voting trustees, and a certificate, which is No. 5 in the Certificate Book, was issued to the voting trustees.

The Court: For the whole sum?

Mr. Quinn: For the whole sum, and voting trust certificates were issued as follows:

No. of certificates.	Issuee.	No. of shares.
Certificate No. 1.....	Max W. Stoechr, Trustee.....	1875
Certificate No. 2.....	H. E. Stoechr	357.14
Certificate No. 3.....	Max W. Stoechr, Trustee	223.21
Certificate No. 4.....	Max W. Stoechr	44.65

Then follows in the book the following: Voting Trust Certificate No. 2 was cancelled, and the following voting trust certificates issued in place thereof:

Certificate.	Issuee.	No. of shares.
Certificate No. 5.....	George E. Roehlig	2
Certificate No. 6.....	Alfred de Liagare	2
Certificate No. 7.....	George E. Roehlig	8
Certificate No. 8.....	Alfred de Liagare	8
Certificate No. 9.....	Lotte Stoechr	100
Certificate No. 10.....	H. E. Stoechr	237.14

Mr. Marshall: Did you give the date of those last transfers?

Mr. Quinn: No; I can give you the dates. That first four voting trust certificates, Nos. 1, 2, 3, and 4, were issued on February 19, 1917, and certificates Nos. 5, 6, 7, 8, 9 and 10, which I have described, were issued July 13, 1917. They, if your Honor please, as you will see, were merely the breaking up of the ownership of H. E. Stoechr, and they did not affect the issue to the two Germans, two aliens for whom Max W. Stoechr as trustee, acted; that is, the 1,875 shares and the 223.21 shares.

By Mr. Vorhaus:

Q. After the breaking out of the war and the passage of the law known as the Trading with the Enemy Act, was a report made to the proper custodian that the stock held by you and Hans as trustee for Georg and Eduard, were held as trustee for them?

Mr. Ingraham: I object. Was that in writing?

A. A report was made immediately, in writing; it was made some time in December, as far as I remember; December of 1917, I am not certain. It was before possession was taken of any of these properties. I reported to the proper custodian that this stock which was issued for the partnership interests of Georg and Eduard was held by me as trustee for these people, as aliens.

Mr. Bradley: We object on the ground that the report is the best evidence.

The Court: I will take it. I do not see how it could be material.

Mr. Vorhaus: It is admissible on the question of good faith.

The Court: I am going to take it. It is a wide issue and I will take it. Have you it here?

Mr. Bradley: We have reports.

200 The Court: I think, Mr. Bradley, on the whole, as you are challenging the good faith and legality of the contract which was made between the German corporation and the New York corporation, I ought to take in all that they did, which they might urge to show that it was a bona fide sale, and they were not trying to evade the law.

Mr. Ingraham: Of course, this was only after the contract was made.

The Court: So it was.

Mr. Ingraham: I have no objection to your Honor's taking it.

The Court: It is quite clear I should not rule on the proofs.

Mr. Ingraham: The law requires all these corporations to make these reports and there was a severe penalty for not making them.

The Court: I do not say how good proof it will be.

Mr. Ingraham: I have not any objection to your Honor's taking it, except under the circumstances I would like to have a formal objection noted.

The Court: You have your record. I have overruled the objection. As I said first to Mr. Bradley, I do not see just how it could be material, but on reflection, it seems to me it might be material.

If their conduct was unexceptional and in compliance with the
201 law, they may argue that.

Mr. Vorhaus: Report by Stoehr & Sons, Inc., to the Alien Property Custodian is dated December 6, 1917. The Act was passed October 6th. This report is made, if your Honor please, pursuant to Section 7A of the Trading with the Enemy Act approved October 6, 1917, and transmits certain information. It is accompanied by a letter. The witness identified his signature to the report and it was offered in evidence as plaintiff's Exhibit No. 4.

In response to the Court's Question, the witness stated that Lotte Stoehr was the widow of Hans E. Stoehr.

In response to a question by Mr. Vorhaus, the witness stated that his brother Hans died on the 18th of March, 1918.

Mr. Vorhaus: I offer in evidence the Voting Trust Agreement, dated the 19th of February, 1917.

Mr. Quinn: If your Honor please, I will enter a formal objection there. I think that is without authority to bind the two Germans, whose interests were purporting to be dealt with the partners of Max Stoehr here.

Mr. Ingraham: I take an objection on behalf of all the defendants.

The Court: Objection overruled.

The Voting Trust Agreement was thereupon admitted in evidence as plaintiff's Exhibit No. 5.

The Witness (resuming): The Botany Worsted Mills Corporation was organized on May 11, 1889, under the laws of New Jersey for the business of the spinning of wool and worsted and yarns and the manufacture of dress goods and men's wear.

202 At this point the allegations of the fifth paragraph of the bill of complaint were admitted by the defendants.

The Witness (resuming): The mill had grown in the 1890's very rapidly, and had passed over the very bad years of 1900 in a very good condition, and had grown to be a plant employing almost 7,000 people.

By the Court:

Q. When was that, Mr. Stoehr?

A. Up to 1914, and up to 1917, I may say, the end of 1916. It was very prosperous and was engaged in the manufacture of dress goods mostly. It was equipped for such purposes with a very small men's wear department. It has been charged several times in the newspapers that the Botany Worsted Mills did no work for the Government. I may state that in 1916, already, before the United States came into the war, the plant had a very large contract with the Navy Department, with the Marines, for uniforms, and blue Kersey.

By Mr. Vorhaus:

The Witness (resuming): That was before we got into the war. It manufactured worsted yarns, which together with cotton, we worked into underwear for the Army and Navy. The part of the plant being mostly equipped for ladies' wear, of course, we did not run that part of the machinery which was not equipped for men's wear or for Army goods, even in the first part of the year 1917 for the purpose it was made for. We could not manufacture efficiently

203 Army goods on those looms, but we manufactured very efficiently worsted yarns for underwear, as I have stated before, in the first part of the year, before Mr. Palmer took the plant over.

The Witness (resuming): Before the outbreak of the war, in 1917, we employed very close to 7,000 men, I do not think the figure ever reached the actual 7,000, but it was 6,800 and some odd men. The plant, as far as I remember, has about 140 acres of ground and I do not know exactly how much there is under roof. It is a very large plant. We have 2,100 and some odd looms; we have about 90,000 spindles, worsted spindles, and 10,000 woolen spindles. To some extent, the machinery that the Botany Worsted Mills had was the same kind of machinery that is used in other mills in this country. We prided ourselves that we were very efficient in every way and

very well equipped and that the machinery was kept in very good order and it has always been stated as such. Prior to the time Mr. Palmer took possession of the Botany Worsted Mills, I think the volume of business in 1917 was \$28,000,000 as far as I recall the figures.

204 Mr. Quinn, for the defendants, admitted that the Botany Worsted Mills Co. had large assets and was a prosperous business and promised to produce the balance sheet later.

It was stipulated by counsel that on the books of the Botany Worsted Mills, 5,690 shares of the stock of the Botany Worsted Mills stood in the name of Stoehr & Sons, the partnership prior to and on February 17, 1917, and that on February 20th, 1917, the total of 5,690 shares were transferred into the name of Stoehr & Sons, Incorporated. This admission was made by counsel for the defendants without conceding the validity of such transfers, or that the by-laws were complied with or the certificates produced.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, called upon the defendants to produce the original certificates representing 1,290 shares out of said 5,690 shares of stock of the Botany Worsted Mills. Mr. Quinn, as counsel for the defendants, responded that he, as counsel for the defendant Stoehr & Sons, Inc., did not have such certificates in his possession.

Whereupon, by consent of the parties, Mr. Vorhaus in behalf of the plaintiff, introduced in evidence a form of stock certificate showing the form of stock certificate used by the Botany Worsted Mills, which document was marked plaintiff's Exhibit 6. Mr. Quinn in response to an inquiry of Mr. Marshall, counsel for the plaintiff, stated that the certificates for the said 1,290 shares were in the possession of the Treasurer of Stoehr & Sons, Inc.

The Witness (resuming): I am a stockholder of Stoehr & Sons, Incorporated, to the extent of 44 shares and have never relinquished my interest in that stock.

The Court: It is admitted by the defendant that it appears on the books of the Company (The Botany Worsted Mills) that 14,900 shares were registered, 10,000 in the name of Hans E. Stoehr and 4,900 shares in the name of Max W. Stoehr. The date of the 10,000 shares transferred in the name of Hans E. Stoehr, 205 trustee, was January 15, 1915, and the date of the transfer to Max W. Stoehr of the 4,900 shares was February 25, 1915, and that this admission is without conceding the validity of the transfer to effect a change of legal title.

Mr. Quinn: The date of the transfer to Max W. Stoehr I find was February 26, 1915, the transfer of 4,900 shares on the books of the company.

Whereupon, Mr. Vorhaus called for the production of the Agreement marked Exhibit I and annexed to the bill of complaint, and offered in evidence a waiver of notice of meeting and minutes of meeting of directors of Stoehr & Sons, Incorporated, held February

20, 1917, and also the contract which is Exhibit I attached to the complaint, dated February 20, 1917.

Mr. Bradley: To the contract we object.

The Court: What is the date of that meeting?

Mr. Vorhaus: February 20th.

The Court: Now, of course, you object to the contract. The best way would be to take it over objections.

Mr. Bradley: May we state the grounds of objection now, your Honor?

The Court: If you like.

Mr. Bradley: The grounds of objection are first the agreement of Hans E. Stoehr does not purport on its face to be done by an officer or agent of the corporation or anyone in matter authorized; second, that there is no evidence of any authority on the part of Hans E. Stoehr to enter into the agreement on the part of the German corporation; third, that the agreement was with a corporation in which Hans E. Stoehr was interested and of which he
206 was President—

The Court: I will overrule that and take your exception so that your record will be straight.

Mr. Bradley: I want to state as ground four, the contract does not affect the proprietary interest in the subject matter thereof.

Mr. Ingraham: And did not transfer to the New York Corporation the title to these shares.

Mr. Quinn: It does not represent the honest intention of the parties to it. It never intended to do what on the face of it it purported to do, and that it was a sham and a fraud.

Waiver of Notice and Minutes of Meeting of February 20th, marked plaintiff's Exhibit 7.

Agreement marked plaintiff's Exhibit No. 8.

By Mr. Vorhaus:

Q. Now, will you please state what position, if any, Hans E. Stoehr, your brother, held in this German Company called the Kammgarn-Spinnerei Stoehr Company?

Mr. Ingraham: We object to that. He cannot testify on personal knowledge of it.

Mr. Vorhaus: If your Honor please, Hans is dead, the books are over in Germany, the original records, and I know of no other way to prove that except this way, and I think your Honor ought
207 to receive it for what it is worth.

Mr. Ingraham: It is a perfectly simple proposition that no agent can ever prove his agency by his admissions. This is all this man could do. He was in America; had not anything to do with the German Company, and all he could know was what Hans told him or what somebody else told him.

By the Court:

Q. Have you any connection with the Kammgarn-Spinnerei Stoehr Company?

A. Yes, sir, I am a large stockholder in the Kammgarn-Spinnerei Stoehr Company.

Mr. Vorhaus: I think he has more than secondary knowledge of it.

The Court: See whether he has.

By Mr. Vorhaus:

Q. What knowledge have you of what position or relation your brother Hans had with the Kammgarn-Spinnerei Stoehr Company?

Mr. Ingraham: I object to that, sir. They want to get in somehow or other evidence of authority of Hans to represent this German Company in Germany and this witness has all this time been in this country. He attended no meetings of the German Company, he could not have any—it appears upon its face he could not have any knowledge, and any authority must necessarily be in writing. Both this witness and his brother were in this country. The others were in Germany; the German company was in Germany and it is not possible that this witness could have any knowledge of the action of the German Company, except it was in writing
208 and transmitted here, and then that is the best evidence.

The Court: No, that would not necessarily be so. If there were transactions in which he was a party between the Kammgarn-Spinnerei Company and himself, or the Stoehr Company here, in which his brother Hans acted, then those transactions went on certainly if they were on over a period of time, he might have what I would hold was sufficient basis, he might first have knowledge of facts from which it would be a fair inference that Hans had some authority from the German Corporation.

Mr. Ingraham: Isn't some kind of authority essential to authorize a man here to—

The Court: That would depend on how much Hans did.

Mr. Ingraham: Your Honor would hold that a ratification by the German Company of one particular transaction would be authority for the agent here to make future transactions?

The Court: It would depend on what they show. If they showed that there was a course of dealings in which he represented the German Company, I would probably hold he had authority to represent that Company. I cannot tell anything about what the proper inference would be until I hear what Hans did. What you are trying to do now is to prevent the statement of those facts.

Mr. Bradley: The question does not call for such facts.

The Court: I would rather deal with the whole thing now, so that we will know what the scope of his authority is. I
209 shall allow this witness to say if he knows at first hand of actual transactions between Hans and the German corporation

and if he knows who acted for them, if Hans acted for them, let him describe what those transactions were with the idea that they may be able to show what Hans had authority to do. It does not at all follow from that what I will rule as to what he did have authority to do.

Mr. Quinn: The records of the Botany, so far as the officers now in charge have advised me, demonstrate that the communications between the Leipzig corporation and the Botany were by letter and cables in every case, even after the period when the stock was in the name of the two Stoehrs in America as Trustees. Dividends were credited upon their direction, paid out directly upon their orders and the letters that we will put in evidence will show that that Company managed their own affairs themselves and that Hans Stoehr was never directed, as far as the Botany Mills can show, to represent the German firm.

210 Mr. Vorhaus: I was going to ask him first what position, if any, Hans had.

The Court: No, we will have to take it up in this way. His acquaintance with Hans, who is his brother, his business dealings with him may be such as to justify an inference of Hans' authority. Did you ask him what authority Hans had.

Mr. Vorhaus: No.

The Court: Well, strictly, if they are going to try it by the book, it calls for his acquaintance necessarily second-hand, or at least his inference from what Hans actually did. The only way you can do it which will be strictly proper, will be to find out what transactions Hans conducted; that from his transactions had with the Kammgarn-Spinnerei that he knows about it, and who acted for them and so on. It will be rather a cumbersome way of proving it, but if they cannot agree with you regarding it.

Mr. Vorhaus: I will take your Honor's suggestion, but I want to say this, that so far as proving the position or office that Hans had in the German Company, my impression is that this witness knows from the statements of his brother and his father, and, in fact, he had been there sometime himself, he knows that Hans was held out to be a director and a certain officer of that company, by the principal officers there, and I think I may ask him; that is why I asked him the question, as to what knowledge he has upon the subject as to what position Hans had.

The Court: Of course, what they said to him would not be good, but the fact that they were holding out to him would be different, if it is conceded that they were directors. I do not know that that even is admitted here. I do not know that they are willing
211 to admit what relation to the German corporation Eduard and Georg had; you might find out.

Mr. Vorhaus: Here is a corporation which was a family affair, and it is fair to assume—

Mr. Quinn: It is not a family affair at all. He just admitted the family were the minority owners, Mr. Vorhaus himself.

The Court: I think you will probably have to go along in the

way I stated, because your questions will inevitably involve second-hand information.

The Witness (resuming): I was in Germany in the year 1914. I was at the offices of the Kammgarn-Spinnerei Stoechr Company, of which Company I was also a stockholder, but I never attended any of the Directors' meetings.

In response to a question "who was the President of the Kammgarn-Spinnerei in 1914," the witness stated that the German Aktiengesellschaft differs from the American corporation in this—that the Aktiengesellschaft has an acting Director, a manager. He is the director. He has the German name 'Director.' He is a director and he signs the form. Stoechr & Company had two of those; one my brother Georg and one Dr. Kuntze. Above these two directors is an aufsiehrat—or executive committee may be the proper expression for it here. This aufsiehrat has a chairman, who at that time, I think was my father. He had that position for very many years. I do not know whether he resigned in 1914 or 1915 or in 1916, but he is not holding it now at present.

Mr. Bradley: We object to the last answer because it does not appear to be within the knowledge of this witness.

212 The Court: Objection sustained. I will strike that out.

The Witness (resuming): Hans was a member of the Aufsiehrat—the exact definition of the Aufsiehrat is that it is the supervising board. Hans went to Europe practically every year just as I did. He would spend one or three months over there.

In response to a question "Will you tell me some of the transactions that were had between yourself or the Botany Worsted Mills and the Kammgarn-Spinnerei in which Hans participated?" the witness replied "At present I know of no transaction which would follow Hans or Stoechr & Company into Botany, for they were absolutely separate companies; he voted their stock at their stockholders' meetings.

The Court: I will take that, that he voted the stock of the German corporation at the directors' meetings of the Botany Worsted Mills.

The Witness: The stockholders' meetings.

Mr. Bradley: Will your Honor in that connection get the years?

The Court: Yes.

213 The Witness (resuming): He voted the stock in 1913, 1914 and 1915, I think the stock was already transferred to him and me as trustees; I would not say that definitely.

Replying to a question regarding what acts he knew of that Hans undertook, the witness said "May I amend my statement here? When Mr. Eduard Stoechr was over here, he was chairman of the company, as far as I remember, he voted that stock." I cannot say the years; I do not remember the years, but it was a rule that when my father was over here he represented the firm, and when he was not here at the stockholders' meeting, that my brother represented the firm. By the term "firm" I mean the German Company.

In 1914 the Kammgarn-Spinnerei Stöhr Company sold worsted yarns over here, which were supervised by Hans Stöhr. The Botany Worsted Mills had charge of those sales; Hans Stöhr negotiated them to the Botany Worsted Mills. He effectuated the sales. The Kammgarn-Spinnerei Stöhr & Company offered yarns, or Botany Worsted Mills wrote over and asked for delivery of yarns, or asked for offers—that was considered a sale to the Botany Worsted Mills, and all these affairs were directed by Hans E. Stöhr. Mr. Stöhr signed the letters and he did all that was necessary in the form of negotiations. Hans acted for Botany and wrote the Kammgarn-Spinnerei; he signed the letter on behalf of the Botany Worsted Mills and the Kammgarn-Spinnerei wrote back to Hans. I do not recall any other acts or any transactions between the Kammgarn-Spinnerei Stöhr Company and the Botany Company or any other concern; the Kammgarn-Spinnerei did no business over here until 1914, and then only for a very short time, until the European war stopped that business.

There were no business transactions had in this country in which the Kammgarn-Spinnerei was interested until 1914 that I recall; everything was stopped August 1st, 1914. As far as I remember during the first seven months of 1914 the Kammgarn-Spinnerei shipped yarns over here; that is the transaction I spoke of. They sold some yarns to the Botany Mills or some other customers, my brother Hans writing for the Botany Worsted Mills to the Kammgarn-Spinnerei, and they answered him. My brother Hans was representing at that time, as I said before, the Botany Mills, and the German house was being represented by either my brother Georg or my father over there. In respect to the other customers to whom the Kammgarn-Spinnerei sold worsted, I cannot recall separate instances, and I think that the financing of those transactions were done through the Botany Worsted Mills. That means that the customers would make payments to the Botany Worsted Mills, instead of Kammgarn-Spinnerei, Stöhr & Company. I do not think the transactions were done directly between Leipzig and the customers here; for the most part through the Botany Worsted Mills, the Botany Mills for the most part acting as selling agent.

Hans Stöhr being the particular officer of Botany Worsted Mills conducting those negotiations.

Mr. Vorhaus: I take it the Court will take judicial notice of the date when war with Germany was declared, April 6, 1917.

The Court: Yes.

Mr. Vorhaus: And that war against Austria was declared December 7, 1917?

The Court: Yes.

Mr. Quinn: Your Honor takes judicial notice that diplomatic relations were broken off February 3, 1917?

The Court: Whatever you tell me.

Mr. Vorhaus: If your Honor please, there is one fact that was acquiesced in this morning, which is not quite correct, and that is that between the time of the breaking of diplomatic relations and the

outbreak of the war, that there was no communication between citizens of America and citizens of Germany.

Mr. Ingraham: We never agreed to that.

The Court: They asserted that there was.

Mr. Quinn: I said we would prove there was communication right up to the outbreak of the war.

The Court: Mr. Quinn's position is that it was possible to communicate with Germany until April 6th.

Mr. Vorhaus: Your Honor made the observation that between the date of these transfers and the outbreak of the war there could have been communication, and they could have heard of it, and Mr. Bradley made the suggestion that there was no communication—

Mr. Bradley: There certainly was no communication after April 6th.

Mr. Vorhaus: No, before April 6th.

Mr. Marshall: I do not think there was any misunderstanding.

The Court: I understood it just as Mr. Bradley gave it and as Mr. Quinn stated it.

Mr. Quinn: Mr. Bradley said what he did, that it would not be legal after April 6th.

The Witness (resuming): We consulted counsel in all of these transactions involving the incorporation of Stoehr & Company, Incorporated, and the making of this contract for the 14,900 shares, our counsel being Herbert Heyn of Heyn & Covington, a New York law firm. Mr. Heyn died April 30th, 1918. The firm of Davies, Auerbach & Cornell were not at any time in these matters associated with the firm of Heyn & Covington. Mr. Lunsen went with Mr. Heyn to Washington in 1918 to explain the reports to the Alien Property Custodian which the Botany and Stoehr and Sons had made. I think that on March 20th a directors' meeting of Stoehr & Sons was held. The minute book will show that,—at which meeting Mr. Heyn was present.

By Mr. Vorhaus:

Q. Just state what Mr. Heyn stated in regard to the resignations that were demanded by Mr. Palmer?

217 Mr. Ingraham: There is no proof that any were demanded.

The Court: I will take it, only I will say this, that unless it is proven that what Mr. Heyn reported to them in fact emanated from the Alien Property Custodian I shall not regard it.

They will have to prove two things. First, that the Alien Property Custodian made the request, and second, that they acted on it. Now then, this is the second proof first, a little out of order. I will take it now.

Mr. Quinn: I do not know whether it is quite clear; I do not know whether counsel for plaintiff has made it clear which company they are referring to, Botany or Stoehr.

Mr. Vorhaus: I am talking about Stoehr and Sons.

Mr. Quinn: Now then, I have the record of that here, and that was not done at a stockholders' meeting at all in the first instance. It was done by successive resignations later on. If you want the record.

The Court: I will take what Mr. Heyn said that he had been told by Mr. Palmer.

218 The Witness (resuming): This was at a Directors' meeting of Stoeck & Sons, Incorporated. Mr. Heyn returned from Washington, called that meeting, and, as far as I remember, there was present George B. Roehlig, Alfred de Liagre and myself, besides Mr. Heyn. Three of the above were directors. The presidency of Stoeck & Sons at the time was waiting through the death of Hans E. Stoeck. Mr. Heyn said in substance that Mr. Palmer desired us to elect in place of the deceased, Hans E. Stoeck, Mr. James N. Wallace as president; he wanted further to elect in place of Mr. de Liagre and Mr. Roehlig. I do not know in which order, Mr. Francis P. Garvan and Mr. Duvall. He wanted all the directors to resign and selected the two directors aforementioned, Mr. Garvan and Mr. Duvall; I do not know whether at that time I resigned and was re-elected, or whether I just stayed in the firm. I suggested at the time to Mr. Heyn, asking him what would happen in case we would not comply with the wishes of Mr. Palmer. He said that Mr. Palmer was an officer of the State, elected Alien Property Custodian, and if we would not comply with his wishes, the Company would be seized by the Government, it would be taken over by the Government forcibly. I cannot state whether he told me that that is what Mr. Palmer said or that that is what he thought would happen; the meaning of what Mr. Heyn said Mr. Palmer had said was that he had got that impression at the Alien Property Custodian's office at Washington.

219 I would also not say that Mr. Palmer said that personally to him, but that is what he brought back from Washington, from his dealings with the Alien Property Custodian's office. I was not present when he talked with Mr. Palmer. Thereupon, we elected Mr. Wallace as president; and elected Mr. Francis P. Garvan and Mr. Duvall as directors. Mr. George Roehlig and Mr. Alfred de Liagre resigned. Mr. Wallace was elected President and director in place of Mr. Hans E. Stoeck, who had died two days before, so there were three out of four directors and I was the only remaining director. I remained a director I think to the 14th of October, 1918, but I would not say that that date is correct, but approximately the beginning or the middle of October. In the same meeting that Mr. Heyn said what we just talked about, he also requested me to hand in my blank resignation, and that this resignation was acted upon in the meeting in the beginning of October, where I was not present, of which I had never received notice as a director that the meeting would be held. I was requested at that time on March 20th to give my resignation in blank, so that this blank resignation could be accepted at any time the other directors chose.

220 The Court: As far as we have gotten yet, that may be the fact, but as far as we have gotten yet, Mr. Heyn suggested that two directors resign, and the places were to be filled by Mr. Palmer's nominees. Now, the matter of the resignation of Mr. Stoehr, he has not said anything about Heyn saying that came from Palmer.

The Witness (resuming): I was told on March 20th to give in my resignation in blank by Mr. Heyn, that it was at Mr. Palmer's request; otherwise I would not have been re-elected a director. I cannot state whether Mr. Heyn brought it back from Washington, whether Mr. Palmer told it to him, or anybody else, I cannot say. I do not say that Mr. Heyn gathered this from Mr. Palmer personally but from Mr. Palmer's office, from his dealings with the Alien Property Custodian's office. I do not know whether he saw Mr. Palmer personally, or who he saw. Mr. Heyn was to my knowledge in Washington six days or something like that, and while he saw Mr. Palmer personally during that time, I think his dealings were with Mr. Duvali and Judge Brodhead. He did not say that Palmer did it, but that he got it from either Mr. Palmer or Mr. Duvall. Mr. Duvall was one of the attorneys.

221 Mr. Vorhaus: Is Judge Brodhead here in Court?

Mr. Bradley: Yes.

Mr. Vorhaus: What position did Mr. Duvall hold?

Mr. Brodhead: He was Chairman of the Division of Corporations.

Mr. Vorhaus: In the Alien Property Custodian's Office?

Mr. Brodhead: Yes.

The Witness (resuming): I do not know who was subsequently elected as director in my place in Stoehr & Company, Incorporated. I had a conversation with Mr. Heyn in reference to the Botany Worsted Mills with respect to the officers resigning there, I think, it was after this very meeting, but I would not be sure about the date, for during that time I had been almost daily in conference with Mr. Heyn. About that time he said in substance about the same thing as with Stoehr & Sons.

Mr. Vorhaus:

Q. Tell me what he said.

Mr. Ingraham: Your Honor takes this under the same ruling?

The Court: Yes. I suppose Heyn was the agent, and whatever was said to Heyn is enough. That was the demand upon their agent, but I do not know that it makes any difference. If he will say what the agent told him.

222 Mr. Ingraham: He was their own agent and their own attorney who advised him.

Mr. Vorhaus: Mr. Heyn is dead, and he negotiated between the Alien Property Custodian's office and this Corporation.

The Witness (resuming): I cannot exactly state any more what Mr. Heyn said, but in substance it was this, that we had to elect seven

directors out of eleven for Botany Worsted Mills, seven out of eleven being the nominees of Mr. Palmer, and four directors would be left to select from the Botany Board. There thus arose an argument in several meetings about the directorship of the appointees of the Botany in the stockholders' meeting. Then I was told by Mr. Duvall to vote for seven directors who were nominees of Mr. Palmer, that I think was at the regular stockholders' meeting, and the four for Botany Worsted Mills were left open. I voted the stock—I think there was no power yet, no directors' meeting, as far as I remember, which empowered any one particularly to sign a proxy for Stoehr & Sons, and I think there was an old power of attorney which read to my name; I think that was the reason I voted the stock. The names of the seven directors that were to be elected at that meeting, if I remember right, came in a letter from the Alien Property Custodian's office; whether I got that directly from Mr. Duvall, or whether it was sent, I do not know; the names of the seven directors are on the Bill of Complaint. They are James N. Wallace, Andrew B. Duvall, Walter D. Jones, Thomas P. Martin, Thomas J. Maloney; Herbert B. Howell was added later, H. C. McEldowney; Richard Stockton and W. J. Hellmer were added later. We submitted the four names that we wanted to have elected, and as the Alien Property

223 Custodian was represented with two attorneys on his part of the Board, by Mr. Duvall and Mr. Francis P. Garvan, we suggested that the old Botany Board or the German Board, as Mr. Quinn said before, should have at least one attorney on them,

We voted on and elected all of these seven directors whose names were given us by Mr. Heyn as the nominees of the Alien
224 Property Custodian. None of them had ever been stockholders in our company,—I would like to correct that statement. There was a demand made upon Stoehr & Sons at the time to transfer to each of those gentlemen five shares of stock which were in the possession of Stoehr & Sons to qualify them as directors and I do not know whether that was done before their election or after their election; that was requested by the Alien Property Custodian's office but before that request was made, none of these seven gentlemen were stockholders of my company or of the Botany Worsted Mills and none of them were stockholders at the time of their election or prior thereto.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, called upon the defendants to produce the first letter that Mr. Palmer wrote to the Botany Worsted Mills demanding the possession of the stock. Mr. Quinn, as counsel for the defendants, denied all knowledge of such document, whereupon Mr. Marshall of Counsel for the plaintiff, for the purpose of showing the seizure of these 14,900 shares of stock of the Botany Worsted Mills offered in evidence the direction, order and demand of Mr. Palmer, purporting to bear
225 the date of April 5th, 1918, addressed to Botany Worsted Mills, without admitting the validity of such document and claiming that the sending of this demand was an unlawful act. Such document was then admitted in evidence and marked Exhibit 9.

The Witness (resuming): The directors other than the seven nominated by Mr. Palmer and elected were Mr. Prehn, Mr. Ferdinand Kuhn, George Roehlig and myself and at the time we were so elected directors we were all requested to hand in our resignations in blank form, as in the case of Stoehr & Sons. I cannot say to-day who really made the demand, as far as I remember, either Mr. Quinn or someone from his office made the demand. All the books at that time were kept at the office of Mr. Quinn—I mean the books and papers. I was present in the meeting of the Board of Directors. If I am right in the date it was October 10th or October 11th, of 1918, when the meeting was opened, and just that minute I entered the door. I was not at the opening of the meeting; I just heard the last few words, and Mr. Duvall, the Chairman, said that before the meeting is the resignation of Mr. Max Stoehr. I had not given any additional resignation except this blank one and this was acted upon in October, 1918 and unanimously accepted. I do not know who was elected in my place. Up to the time that my resignation was accepted I think I attended the Directors' meetings. There was an executive committee, and they met either before or after the meeting as a rule but neither I nor the other old members of the Board were invited to take part in those meetings. The meeting of the directors was sometimes called for 10.30 but did not take
 226 place until 11.30, 12.30 or 1.30, on account of an executive meeting which was in session. I cannot exactly say who constituted the executive committee; that would be in the records of the Botany, of the minute book of the Botany, who constituted it but neither I nor any of the other three were members of that executive committee.

By Mr. Vorhaus:

Q. So far as conducting the management and the policy, and the place, were any resolutions introduced by any of those seven directors nominated by Mr. Palmer.

The Court: Of course; they had the majority.

By Mr. Vorhaus:

Q. At the time when the Botany Worsted Mills was taken possession of by the election of these new directors, was the Botany Worsted Mills solvent?

A. It was.

227 I have already described the nature of the business carried on by the Botany Worsted Mills. Stoehr & Sons, Inc., at the time that corporation was taken possession of by the election of the new Directors was, to my knowledge, solvent.

Stoehr & Company had assets of over \$1,000,000 but as to the liabilities I cannot say; the balance sheet will prove that. The assets consisted, besides the 5600 shares of stock, of open accounts and merchandise, raw wool and also this contract for the purpose of the 14,900 shares. Neither the property of the Botany Worsted Mills or

Stoehr & Sons, Incorporated, at the time that the Government took possession, was perishable, or such as required immediate sale for its preservation. The stock of the Botany Worsted Mills has never been listed on any exchange nor was it ever traded in the open market; there was no market for the stock if offered publicly nor would there be an immediate acceptance of it. The stock of Stoehr & Sons was not listed on the Stock Exchange nor was there any market for that stock.

228 Whereupon, Mr. Vorhaus, as counsel for the plaintiff, offered in evidence the notice issued by the Alien Property Custodian advertising the proposed sale of the 24,410 shares of the Botany Worsted Mills and the Court accepted it remarking "It is an official act of sale; I will take it as such. It goes in against everybody". It was then marked Plaintiff's Exhibit 10.

It was conceded by Counsel for the defendants that similar advertisements were inserted in many newspapers in the United States.

The Witness (resuming): There is no plant in the United States that is in one compact plant as the Botany is, that they produce from raw wool, that they get the raw wool and distribute out of the same mill the finished material; it is as a single unit or plant the largest of its kind, as far as I know, in the United States.

Our competitors chiefly are Forstman and Hoffmann, in some products the American Woolen Company, and in part of our products, in yarns, there are quite a number of concerns which are in competition with us, and in dress goods there are a number in competition with us, but there are very few who do both, who sell yarns and dress goods, and men's wear at the same time. I think Forstman & Hoffmann combines the whole thing together, but they have two mills; and so does the American Woolen Company. It is very hard to say what other concerns there are besides the two above mentioned but I could pick them out of the Textile Bluebook, but I could not know offhand. Some of these people who deal in or make yarns are very large concerns; I could not say how many there are, but that is only a part of our business. There are, of course, in Eng-

land and France quite large concerns, and there are concerns
229 in France with which we have been very friendly before, and who have invested in mills in France, and the same products as we make, not in one plant, but in separate plants, in combing plants and spinning plants and in weaving plants, but both in England and France and in Belgium there are plants similar to ours which manufacture cloth, gather the wool and do all that kind of work. The plant of Juillard & Company, for instance, are heavy competitors of ours in light weight dress goods fabrics; I cannot say which plants they control. They manufacture and import, and I do not know how far they import and how far they manufacture here. It is an American house, but it is of French origin and French controlled, so far as I know; the firm of Juillard & Company is, as far as I know, originated in Rubaix, as far as I know. I would not swear to it, but that can be very easily ascertained.

Mr. Quinn: I move to strike out so far as he knows.

The Court: Yes, do not go into that. Juilliard & Company are an old American house; they have been citizens for a hundred years at least.

The Witness (resuming): I married in this country; my wife and daughter were both born in this country.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, called the attention of the Court to paragraph 17 of the Bill, setting forth the various treaties the United States had, of which the Court took due cognizance.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, 230 offered in evidence Exhibit 2 annexed to the bill and it was consented by both sides that the copy annexed to the bill may be received in lieu of the original. The date of its service was conceded by both parties and that about the date of its date it was served upon the Alien Property Custodian and retained by him.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, offered in evidence the Notice of Claim under oath under Section 9, of the Trading with the Enemy Act, which is Exhibit 3, attached to the bill. This was accepted with the same stipulation as contained in the preceding paragraph.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, further offered in evidence the notice of claim pursuant to Section 9 of the Trading with the Enemy Act, which is annexed to the supplemental bill and which is referred to as Exhibit L, attached to the supplemental bill. This was received with the same stipulation.

The Court: These three exhibits need not be marked. They are part of the record, they are part of the case.

Whereupon Mr. Vorhaus, as counsel for the plaintiff, asked the defendants' counsel to furnish him with the names of the executive committee. Mr. Quinn, as counsel for the defendants, then reading from the minute book of the Botany Worsted Mills, stated that the executive committee was appointed at a meeting of August 20th, 1918, and that Messrs. Wallace, Maloney, Jones, Martin and Duvall were the members of the executive committee elected at the meeting of the Board held August 20, 1918. They continued in office until March 27th, 1919, when the following members were elected: Messrs. Maloney, Howell, Jones, Martin and Duvall, and are now members.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, offered in evidence the financial statement of 1917 of the Botany, as of November 30, 1917. This was marked plaintiff's Exhibit 11. Also a 231 partial statement of 1918 as of November 30, 1918, which had been uncompleted. This was marked plaintiff's Exhibit 12.

By Mr. Marshall:

Q. Did you have any notice of any proceeding taken by the Alien Property Custodian with regard to the seizure or shares of stock of

these 14,900 shares of stock, and the shares of stock claimed by Stoehr & Sons?

A. There may have been a notice given to the company of the forfeiture or seizure of the 14,900 shares of stock and the shares of stock claimed by Stoehr & Sons, but I personally have not seen any. I know of no notice nor did I ever hear of any to the company. I did not appear before any Court in respect to this matter or any tribunal nor did my Company, as far as I know; there was no proceeding before any Court with regard to the seizure of these shares of stock to my knowledge as long as I was a director of the company, nor did I ever hear of any.

Whereupon, Mr. Vorhaus, as counsel for the plaintiff, offered in evidence a statement prepared by Mr. Hesse, the Treasurer of Stoehr & Sons, of the assets, the current assets and current liabilities of the Company as per the books. This was marked plaintiff's Exhibit 13.

Mr. Bradley then cross-examined the witness:

232 The Witness (resuming): I came to America in 1900.

The first venture of my father into the woolen yarns and spinning was I think Eichel & Company; my father was director of Kammgarn-Spinnerei. The firm in Leipzig was founded approximately in about 1880 and the one in America in about 1889. There was a firm of Stoehr & Sons in Leipzig was a partnership and there was a corporation known as Kammgarn-Spinnerei there too. They did business and had bank accounts both in Leipzig and Berlin. Stoehr & Sons is the same concern that did business here; one partner was over there and one was over here and had assets both in Germany and America. It was a single concern. My last visit to Germany, as I stated before, was in 1914. At that time the Kammgarn-Spinnerei had five members the Aufsichtsrat, which corresponds to an executive committee on the American side. The five members were my father, my brother Hans, Mr. Beckman, Paul Gulden and Rosenthal; this was in 1914. My brother Georg was not a member of that concern, he is a director. There were two directors, Georg and Dr. Kuntze. The aufsiehrsrat is changed over a certain length of time; I do not exactly know how those regulations are. I was not an officer myself. I am a stockholder in the Kammgarn Spinnerei whose capital was 12,000,000 marks. I was the holder of 600,000 marks. My brother Hans was also a stockholder, as far as I know, possessing over 1,000,000 marks. My father, of course, was a stockholder, I think a very large stockholder but I do not know to what extent, larger, however, than either Hans or myself, as far as I know. My brother Georg was also a stockholder. The stock of Stoehr & Company is on the Exchange in Leipzig and Berlin.

233 The Kammgarn-Spinnerei is on the Exchange of Leipzig and Berlin, and it is daily traded. There were a large number of other stockholders and I suppose the directors and executive committee were all stockholders. Besides my interest in the Kammgarn-Spinnerei I had stocks of Solbert & Soehne, a spinning concern, which afterwards were exchanged into stocks of the Kammgarn-

Spinnerei Stoehr & Company, by reason of which I received some additional shares which is included in the 600,000; besides I had bonds of the Kammgarn-Spinnerei, something like the gold bonds which are over here amounting to a thousand marks which is my total bond holdings. I do not recall any other property that I had in Germany besides that; I might have had some more in my bank deposits; I do not know exactly what I have in my bank deposits now; I have not looked that over. The shares I own are deposited with the Deutsche Bank. I returned from Germany in November, 1914. My brother Hans was not there at the time; he was there in the Spring of 1914. Shortly after he returned I went over and he did not go over again after I was there. My brother Georg made one visit over here, arriving in 1914 and leaving in 1915. I have not the date of his arrival and departure. Approximately, he arrived before Christmas and I saw him the last time, I think it was in the middle of October, in New York in 1915 remaining here approximately ten or eleven months. My entire family was actively connected either with the Kammgarn-Spinnerei or the Botany as well as interested in Stoehr & Sons, the partnership. I have no statement of the German assets of Stoehr & Sons. Georg Roehlig was my first cousin. He is the only son of my father's only
234 sister. He is then the nephew of my father. He had therefore not been associated with Stoehr & Sons' business but up to that time and prior to that he had been associated with Botany, I cannot exactly state how long. I think Mr. Roehlig came over here in 1890 or 1891 and since that time has almost continuously been with Botany with the exception of a period of study which he went over to Europe to complete his studies for the Botany Worsted Mills. He died when he was 45, being a naturalized citizen; he died in October, 1918. Upon the organization of Stoehr & Sons, Incorporated, he retained his connection with Botany but he was not active, he simply assisted me and my brother Hans in perfecting the organization; took the nominal office of Vice President, the business of Stoehr & Sons was very little active anyway. I mean, it was not a large officer, or something like that. De Liagre was connected with Botany since a long time. His uncle, I think, was for many years in the aufsehstrat of Stoehr & Company, the Kammgarn Spinnerei in Leipzig, and his family was connected with the Stoehr interests. He had been connected with the Botany prior to the incorporation of Stoehr & Sons, Incorporated, and that connection continued afterwards; he did not become actively associated with Stoehr & Sons, Incorporated, when it was organized. He is an American citizen. The organization of Stoehr & Sons, Incorporated was completed, I think, on the 19th of February and this contract under which I claim by this suit is dated on the 20th of February. I attended a meeting of the directors of Stoehr & Sons, Incorporated on February 20th, the day after the organization of that concern, at which the entering into of this contract was considered and authorized; I think I acted as Secretary in that meeting. I
235 know that the Signatures to the articles of co-partnership of the members of the firm of Stoehr & Sons are genuine. (Ex-

amines the articles of copartnership.) I state that these are the articles of partnership that govern the interests of the several partners and the activities of the firm and I call your attention that there are only three signatures on the original. I think the Articles were signed in different places; I am not quite sure. I think I signed it in Passaic, New Jersey. I cannot state where the others signed it; I am quite sure, though, they may all have signed it in Passaic. I noticed the initials on the first blank line. I cannot say whose writing it is; it is not my father's. I am not sure whether there are other copies of this but I think I have a copy, an unsigned copy of it in my files. These were articles that controlled and governed the partnership, as far as they did control it; they were the only articles we had. The partnership was a very loose one. It was an absolute family affair, and we found that this instrument was binding us in very many things too far after a very short time, and then we were not governed by it any more; neither my father nor my brother Hans was. We conducted it as a family affair and the more active partner was on this side, my father being on the other side. My brother Georg and myself were silent or passive partners.

Mr. Bradley: I offer that in evidence.

Marked defendants' Exhibit A.

The Witness (resuming): 'Now as to the Agreement (examining) as it appears in the minute book, with the name Kammergaru-Spinnerei Stoechr & Company, Aktiengesellschaft; it purports to be signed by Hans E. Stoechr, but this is not the signature of my brother; this is not the original; it is a copy you can see that all the signatures are in one handwriting.

Whereupon, Mr. Bradley, of counsel for the defendants, handed the witness another paper.

The Witness (resuming): This is the original (examining); this is the signature of Hans E. Stoechr, that is Mr. Roehlig's signature and that is my signature; this is Mr. Zimmermann's. All those ink signatures are all genuine. I know my brother's signature and that is his signature. I know Mr. Roehlig's signature and that is his signature. I know Mr. Zimmermann's signature. I identify my own signature. They are all genuine. The paper, as stated therein, was signed in Passaic; it was signed on the day when the agreement was made. I do not remember exactly where we were when the agreement was signed, but I am perfectly sure that we were in the place where we signed it. It was signed right there where it was made. I think it was during a meeting of the directors when it was signed, if I remember correctly, at Passaic; that meeting was attended by my brother Hans, myself, Mr. Roehlig and Mr. De Liagre. I think Mr. Heyn was present at the meeting. I think Mr. Heyn had been the regular counsel of Stoechr & Sons, the partnership, practically since it originated, which I believe was in 1913; I cannot state exactly, but I do not think Stoechr & Sons ever had another counsel before Mr. Heyn; I think, in fact, that Mr. Heyn has just drawn

that agreement which you just showed me a little while ago, that co-partnership agreement. I do not exactly know since when Mr. Heyn became counsel for the Botany—I think that through meeting him in Stoehr & Sons, he became counsel for Botany; he had been counsel for the Botany for some time prior to this. There was no other attorney present then Mr. Heyn. There was no other attorney consulted than Mr. Heyn or concerned in the contract for the sale of this stock. There was no other counsel consulted about the contract for the sale of this stock; the only parties who
237 participated in that transaction were my brother Hans, George, Roehlig, de Liagre, myself and Mr. Heyn. The matter of changing directors occurred in March, 1918 in Stoehr & Sons and I think on March 20th in Botany, or the minute book will show the date. That was the first change that was made at least as far as the Alien Property Custodian had any connection with it after this agreement of February 20th, 1917. Mr. Heyn went to Washington, as far as I know and his visit was I think in February; he went down at the instance of the Board of Directors of Stoehr & Sons and the Botany, representing both concerns, as far as I remember with reference to the Alien Enemy ownership of the stock and any other interests in either or both concerns. He went to explain the whole thing. We made a report. After that report, Mr. Heyn went to Washington; I do not know what was instigating Mr. Heyn to go down there just at that time. I do not remember that I have seen correspondence, or that he was asked, but I know he went down for that reason to explain those reports to the Alien Property Custodian; this was prior to anything said or done in reference to changing the personnel of the directors of either concern.

Cross-examination.

By Mr. Quinn:

The Witness (resuming): In regard to my resignation as a director of Stoehr & Sons, Inc. which was acted upon at a meeting of the Board at which I was not present. There was a notice sent to me which arrived too late, and, as I remember, after correspondence, I found out that that very meeting was adjourned to which I was invited too late, and of that adjournment I was not notified, and I protested at the time to Mr. Wallace about that action of the Board.

238 Mr. Quinn: I move to strike that out as not responsive and on the ground that the letters speak for themselves.

The Court: Yes, the letters will have to speak, but I will have to take it that he got notice too late.

Mr. Marshall: And that he had no notice of the adjourned meeting.

Mr. Quinn, as counsel for the defendants, then handed a letter to the witness, dated October 21st, 1918, addressed to James N. Wallace and asked him to identify his signature to that letter, which the witness did identify as his signature. The letter was then offered in evidence and marked defendants' Exhibit B.

The Witness (resuming): If I remember right, the invitation to the last meeting of the Board of Directors which was called for 2.30 reached me with the evening mail; that was about five or six o'clock. It was sent too late to reach me.

By Mr. Quinn: You do not mean to imply you did not receive due notice in accordance with the by-laws do you?

A. I do not know; I did not receive the notice in time. I do not know when the notice was mailed to me.

When asked by Mr. Quinn, as counsel for the defendants, whether he had the original or a copy of a letter dated October 22nd, 1918, sent by Mr. Quinn the witness replied that he did not know, he would have to look it up.

By Mr. Quinn: Do you deny that you received that letter?

A. No I do not.

Q. Is it your best recollection that you received the original of which that is a carbon copy?

A. I probably received it.

Q. Would you be willing to state provisionally subject to correction, when you look it up, that you probably received the original of which that is a carbon copy?

A. I am.

A copy of said letter was offered in evidence and accepted by the Court, subject to its verification by the witness of his having received it, and was marked defendants' Exhibit C.

Mr. Quinn, of counsel for the defendants, then showed the
239 witness a letter addressed to John Quinn and asked him if the signature thereon was his signature. The witness responded that it was and that he had sent it, whereupon the letter was offered in evidence and marked defendants' Exhibit D.

The witness was then shown a copy of a letter dated October 22nd, sent by Mr. Quinn to him, enclosing a copy of the minutes of Stoehr & Sons, Inc., of October 14, 1918, and he stated that he had no doubt but that the enclosure was such a copy.

Whereupon, Mr. Quinn, as counsel for the defendants, read into the Record the minutes of a meeting of the Directors of Stoehr & Sons, Inc., of October 14th:

"Minutes of a regular meeting of the Board of Directors of Stoehr & Sons, Inc., held at the office of the Central Union Trust Company, 54 Wall Street, Manhattan, New York City, Monday, October 14, 1918 at 2.30 o'clock in the afternoon.

Present: Mr. James N. Wallace.

There being no quorum, Mr. Wallace adjourned the meeting to Wednesday, October 16, 1918, at 1.45 p. m.

(Sgd.)

THOMAS J. CURTIN,

Secretary."

He then read into the Record the minutes of a meeting of said Directors held on October 16th, at which all the Directors were pres-

ent except Mr. Stochr. The resignation of Mr. Stochr as Director of the Company was considered and unanimously accepted. Mr. Paul Kieffer was nominated and elected Director in place of Max W. Stochr. Mr. Justus Sheffield was nominated and elected Secretary of the Company instead of Mr. Stochr.

The Witness (resuming): As far as I know, my father, Eduard Stochr, acted under the provisions of the partnership agreement of May 1st, 1913, and I supposed he knew of its terms and provisions. He became a member of the firm. I do not recall that there is any copy of the articles signed by him; I do not remember whether he was here at the time. As far as I know, subsequent to the formation of the partnership, he transferred property to the partnership, pursuant to the terms of the articles of co-partnership; I think he did transfer a large block of stock of the Botany Worsted Mills that formerly stood in his name into the name of the partnership.

240 The stock books of Botany Worsted Mills will show that.

By Mr. Quinn: The articles of co-partnership, Article 4, define active and silent partners, and then contain the following provision:

"The active partners shall have the right to conduct the business in such manner as they may think best, except that no transaction involving a value of more than \$25,000 shall be consummated without the written consent of all the partners."

Q. Will you please tell the Court whether there was any written consent from your father, Eduard Stochr, or your brother Georg Stochr, to the assigning by the partnership or attempted assignment by the partnership, of all the assets of the partnership of Stochr & Sons, Incorporated, in February, 1917?

A. Not that I know of. I was the holder approximately of 600,000 marks in the Kammgarn-Spinnerei; I do not know exactly whether that is right; I do not know the amount of my brother's holdings in the end of 1915 or 1916; my brother was here in 1915 but I did not speak to him about his affairs nor about his ownership in the Kammgarn Spinnerei, as far as I recall; I do not think that I was vitally interested to ask him for the simple reason that we all were trying to acquire more stock. My brother was here nearly a year but I have no sufficient recollection to testify under oath that I spoke to him about his interests in the Leipzig corporation as a stockholder. My last knowledge of my brother, Georg's holdings in the Leipzig corporation was approximately between one and a half and two million; my brother, Hans' stockholdings in the

241 Leipzig corporation was, as far as I know, a little over one million marks; I cannot say what my father's holdings were, not even approximately,—my father never told us really what stock he held in Leipzig. I know that my father held stock in the names of banks, which were standing in the names of banks. My father is 74 years old now and in 1915 he was chairman of the *aufsichtsrat* of the Kammgarn-Spinnerei, or executive committee. The construction of the German company is entirely different from the American

fashion. There is a director, and he has a so-called "procuristen" to manage the business. This "procuristen" here would be a director, and I really do not know how many there were in Leipzig. I do not know how many people had "procuristen" for the Kammgarn-Spinnerei in 1915, 1916 or 1917, for these people have no voting power; they are only managers of the business. The executive is the managing director. George Stoehr and Dr. Kuntze were the two executives of the Company in 1916, the only two who could sign the company alone or separately; of the "procuristen," two can sign together. When the Company was dealing with banks or passing titles to the property, the signatures of either of the managing directors alone would be accepted, but that when we were dealing with the procuristen, and when the company had to sign a document binding the company or transferring title, and the procuristen signed it, there had to be two of them, but as the procuristen changes from time to time their signatures had to be identified like bank signatures and they had to be stated officially as authorized to sign for the Company. I know of no written consent from my brother referring to the transfer of the partnership assets to the New York Company, in February, 1917. I received a salary from the partnership, my brother and I dividing \$5,000 as payment to him for being an active partner while my father afterwards divided \$2,000 with my brother, Georg, being his payment as an active partner. Whether I received my share of said \$5,000 from my brother I cannot say. The total salaries were \$7,000 under the partnership to the active partners, I believe.

Whereupon, Mr. Quinn, as counsel for the defendants offered in evidence the waiver of notice and the minutes of a meeting of directors of Stoehr & Sons, Inc. on April 5, 1917, which was marked Defendants' Exhibit E.

The Witness (resuming): I remember being present at a meeting at which a resolution was adopted fixing the salary of the President at \$24,000 per annum, payable monthly with a commission of six per cent of the profits of the Company, provided that the Company should earn and pay a dividend on its capital stock of at least six per cent per annum; I think I acted as the secretary to that meeting; my signature is there.

Whereupon, Mr. Quinn, as counsel for the defendants, then quoted from the minutes of that meeting, in short, that the treasurer should receive a fixed compensation of \$18,000 per annum, and his commission should be five per cent of the profits of the company, payable only in the event that the Company shall earn and pay a dividend on its capital stock of at least six per cent. I do not think that my father or my brother, Georg Stoehr, knew of the voting of those salaries to Hans Stoehr and myself. I do not know whether they approved of it or not,—not to my knowledge. I never saw any written authority from Kammgarn-Spinnerei relating to the contract of February 20, 1917, relating to the 14,900 shares either by the managing director or by any of the other parties, nor by resolu-

243 tion of the board of directors; in fact, there is no board of directors of Stoehr & Company; nor did I see such written authority by the aufseherrat. Hans was a member of that I think from 1910 until he died; I mentioned the other members before. My father was the chairman, Mr. Rosenthal and Mr. Beckman were other members.

Whereupon, Mr. Quinn, as counsel for the defendants, asked the witness whether he remembered an allegation in the bill of complaint alleging that Stoehr & Sons, Inc. on February 20, 1917, became vested with the title to 14,900 shares of the capital stock of Botany Worsted Mills, and the witness replied that if it was in the complaint then he did so remember.

Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence a letter dated February 9, 1918, signed by Heyn & Covington which, plaintiff's counsel admitted, was the signature of the firm of Heyn & Covington in the handwriting of Mr. Heyn. This letter was admitted in evidence and marked defendants' Exhibit F.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence a letter dated February 9th, 1918, which was admitted by the witness to bear the signatures of the witness' brother Hans E. Stoehr. The letter was admitted in evidence and marked defendants' Exhibit G.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence a letter dated February 5th, 1918, to Herbert A. Heyn, which, the witness admitted, was signed by Hans E. Stoehr, which was admitted in evidence over the objection of Counsel for plaintiff as defendants' Exhibit H.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence as a sample of the voting trust agreement, a
244 copy of the voting trust certificate No. 2 of Stoehr & Sons, Incorporated, as executed, which was received in evidence and marked Defendants' Exhibit I.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence a copy of the old By-laws of the Botany Worsted Mills that were in existence when this transaction arose, which was received in evidence and marked defendants' Exhibit J.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence a ballot purporting to bear the date of April 2, 1918, which was admitted by the witness to bear his signature; it was received in evidence and was marked defendants' Exhibit K.

The Witness (resuming): This is called a ballot. I had a written proxy from Stoehr & Sons, Inc., as to that proxy and as far as I know, it was an old proxy that dated back before the time the Alien Property Custodian came in,—it was an old proxy of Stoehr & Sons, Inc.

By Mr. Quinn:

Q. Will you look at the minutes, or the minute book of Stoehr & Sons, Incorporated, and see whether there is any reference in the
index.

The Court: If there is none you may say so.

Mr. Quinn: There is none. I may state there is nothing in the minutes authorizing Mr. Max W. Stocher to act as proxy for Stocher & Sons, Incorporated.

Mr. Marshall: You mean to say there is no resolution on the minutes?

Mr. Quinn: No reference in any of the meetings of any 245 such authority.

Mr. Marshall: It can be done without it.

The Witness (resuming): The records of the executive committee of the Botany were read to and approved by the board of directors of the Botany before the Alien Property Custodian stepped in; it was the custom. After the Alien Property Custodian came in, I have not heard any such minutes read.

Redirect examination.

By Mr. Vorhaus:

Q. Mr. Stocher, I call your attention to the partnership contract, Paragraph 4, that Mr. Quinn read to you, the last concluding part of it:

"The active partners shall have the right to conduct business in such manner as they may think best, except that no transaction involving a value of more than \$25,000 shall be consummated without the written consent of all the partners."

Was that provision complied with at all in the actual conduct of the business?

Mr. Ingraham: I object to that; whether it was complied with or not, it was the agreement between the parties.

The Court: But it could be waived. If they all united on any act it would be enough. If it was the custom in which they did it, that might show it had become a dead letter.

Mr. Ingraham: As affecting the German partners in Germany.

The Court: Not unless they knew it, but I will take the practice.

246 By Mr. Vorhaus: What was the practice with reference to observing that provision that no transaction involving more than \$25,000 could be consummated without the written consent of all the partners, both in Europe and here, to your own knowledge?

A. This paragraph was first enacted upon, and after a while it was found that it was hindering the business.

Mr. Ingraham: I object to that.

By Mr. Vorhaus:

Q. What was your experience?

Mr. Ingraham: He must name a specific instance.

The Court: Yes.

The Witness: I cannot name any specific instance on this matter. It was not in practice after a while; my father bought stocks abroad.

The Court: I do not think it is essential that there should be a specific instance; I think I was wrong in holding him so strictly as that, but, of course, his conclusion he may not state. If he can say that there were instances in which transactions were put through without the consent of the other partners, I will let him state that. I do not say what the effect will be.

The Witness (resuming): I know that Eduard Stoehr bought stocks of textile enterprises in Europe in excess of \$25,000, in excess of 100,000 marks, which would be the practical equivalent
247 at that time of \$25,000. I think it was in 1913, but I was not positive about the year; that purchase was made without my written consent and without the consent or written consent of Hans; as far as I know of Hans; I know that it was made without my written consent. I could not say how many of such stock transactions in excess of 100,000 marks were made without my consent for they were continuously buying stocks and selling stocks.

By Mr. Vorhaus:

Q. How about your acts here, in making sales and purchases in excess of \$25,000?

A. I cannot say anything definite, I have not seen the books of Stoehr & Sons since 1917, I would not know definitely what happened there. I remember that my brother once asked me to comply with that—comply with those wishes, and the next time he did not.

By Mr. Vorhaus:

Q. How about your father's consent and Georg's consent on transactions that you had here in excess of \$25,000?

A. I do not remember whether there were any transactions here in excess of \$25,000. My attention is called to the fifth provision in the fifth paragraph which Mr. Quinn read to me, as follows:

"In the determination of any question relating to the partnership the first party shall have four votes, the second party shall have two votes, and the third and fourth parties shall each have one
248 vote, and in the event that the active partner shall not agree upon a proposition or matter relating to the business, then the question shall be presented for determination to all the parties and the majority vote of all the partners shall be decisive of any such questions."

In the actual administration of the business, in the conduct of the affairs of the partnership, that provision was never referred to nor was any such procedure followed in carrying out the business of the partnership.

By Mr. Vorhaus:

Q. Your attention has been called to the minutes of the meeting of Stoehr & Company, Incorporated, where a resolution was passed voting a salary to Hans as President and a salary to yourself, and also a commission. Will you please state what the conditions were that led up to the making of that resolution?

Mr. Ingraham: I object to that.
Objection sustained.

By Mr. Vorhaus:

Q. I will put it in another form. What was the extent of the business at the time that Stoehr & Sons was formed as a copartnership in this country in 1913?

A. It was a comparatively small business dealing in stocks, securities, mostly a holding company more or less.

Q. What were the conditions in 1917?

A. It was a very live business, dealing in wool, very profitably, and dealing in all kinds of other commodities, and collars,
249 for instance.

Q. How much profits had you made, or had the partnership made, Stoehr & Sons, by dealing in woolsens?

A. As far as I remember over \$500,000, my brother and I took care of that business here.

Q. And before passing that resolution giving you and your brother a salary and commission, did you submit to counsel as to your right and legality to enact a resolution of that kind?

Mr. Ingraham: I object to that.
Objection sustained.

The Witness (resuming): Mr. Heyn, my lawyer, was a member of the firm of Heyn & Covington; he was an American, I think he was born in Milwaukee.

By Mr. Ingraham:

Q. Do you know anything about where he was born or when he was born?

A. I heard from him that he was born West, I think he told me in Milwaukee.

250-255 The Witness (resuming): I think Mr. Heyn died on April 30th, 1918, I am not sure.

256 We will go on with the defendant's case.

The Defendant's Proof.

257 J. DAVIS BRODHEAD, a witness called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Braldehy:

I am a practicing attorney of twenty-five years' standing and was connected with the office of the Alien Property Custodian during the early part of 1918, as Chief of the Division of Corporations. That Division had charge of American Corporations in which enemy aliens hold shares of stock. As such Chief, I had charge of the cases of the corporate stock owned by enemies in Botany Worsted Mills and Stoehr & Sons, Inc.

Letter written by the witness in behalf of the Alien Property Custodian to Stoehr & Sons, dated January 30th, 1918, calling attention to the report concerning the 14,900 shares in Botany Worsted Mills, was offered in evidence and marked defendant's Exhibit L.

The original letter as offered, was identified by the witness and leave granted to supply a copy of same for the record in this case.

The Witness (resuming): Shortly after this letter was written by me, Heyn & Lenssen, attorneys of New York, had a conference with me in Washington regarding the ownership of stock in both Stoehr & Sons and Botany Worsted Mills. During the conference, which consisted of Lenssen, Heyn, Mr. Duvall, my assistant, and myself, suggestion was made that letters be written to cover all the facts. The explanation given by Mr. Heyn was so complicated that we asked for a written statement from them. We requested them to make a written statement of what they were then telling us verbally, and they undertook to do so. A letter from Heyn & Covington dated February 9, 1918, addressed to the Alien Property Custodian and marked "For the attention of Judge J. D. Brodhead and Mr. Andrew B. Duvall" was received subsequent to this conference with Messrs. Heyn and Lenssen (referring to Defendant's Exhibit F). It was received at the office of the Alien Property Custodian on February 11, 1918, and this explanatory letter is the one we received and was sent to us in pursuance of the conference of which I have just spoken. The letter was written, I believe, in New York, after the return from the conference at Washington.

258 At this conference in Washington, I took up with Heyn and Lenssen, the reconstitution of the Boards of Directors of the two corporations. This was at the first interview. This took place February 5th or 6th. I explained to them that if, after investigation, the Alien Property Custodian was satisfied that the stock or a majority of the stock of this Company was enemy stock, that a demand would be made for the stock and a representation required in the Board of Directors to correspond with the number of shares

which the Alien Property Custodian would become the possessor of, that is the proportion of the stock that the Alien Property Custodian held to the entire, if it was a majority of course the Alien Property Custodian would ask for a majority of the directors. The personnel of the directors was not discussed at that time. I do not recall that I ever discussed with them exactly who would be the appointees of the Alien Property Custodian, because he himself would make the nominations after consulting. Mr. Palmer was Alien Property Custodian and would select the directors. Subsequent to this conference, there was a subsequent conference held at a later date at which the personnel was discussed and settled and Heyn and Lenssen were advised of the names of the Directors selected by the Alien Property Custodian.

Cross-examination:

By Mr. Vorhaus:

The Witness (resuming): The reports of corporations after they had been investigated, were sent to me. These reports came in in great quantities and they were investigated by men who were assigned for that purpose, and when a report disclosed that the subject matter thereof was stock in an American corporation then that report would come to me for further investigation.

Redirect examination.

By Mr. Bradley:

259 The Witness (resuming): After the Board of Directors was reconstituted, so as to include the nominees of the Alien Property Custodian, we looked to the Board of Directors thus appointed to conduct the business of the corporation.

Redirect examination.

By Mr. Ingraham:

The Witness (resuming): We never interfered with the Directors in the administration of the affairs of the Company; the Directors were appointed to direct.

The Court: I will put it to him this way:

Q. Did you yourself, or did you ever in any way assume to direct the directors who were put in these companies or did you give any order to any of your subordinates to do so?

A. No.

Q. Did you ever know of any of your subordinates doing so?

A. No.

Q. Or of anyone else in the Alien Property Custodian's office?

A. No, we ask for reports, of course, from time to time; that is all.

Recross-examination.

By Mr. Vorhaus:

I do not know what Mr. Palmer's orders were or whether he gave any directions to the Directors or what he actually did.

In answer to questions by the Court, the witness testified:

It was our custom to ask the directors from time to time for certain reports. They gave us periodical reports of the conduct of the business, and copies of the minutes.

In response to questions by Mr. Marshall, the witness resumed:

We received periodical reports with regard to Botany Worsted Mills and Stoehr & Sons, Inc., and we kept in touch with the transactions of the corporations and knew just what they were doing.

KARL ZIMMERMAN, a witness called for the defendants, being sworn, testified as follows:

Direct examination.

By Mr. Bradley:

I am Chief Accountant of Botany Worsted Mills and was connected with that concern continuously since 1905. I first came to America in 1898. Prior to becoming Chief Accountant, I was assistant to the Chief Accountant. I have been either accountant or assistant accountant since my connection began. I identify Plaintiff's Exhibit 6, being a sample of the form of corporate stock certificate, blank transfers and talon containing dividend coupons with which I am acquainted. It is the only form which has been in use up to 1919 or 1918. I identify blank sheet headed "Transfers." It is a record of stock representing five shares of the stock of the Botany Worsted Mills. All stock was divided into certificates of five shares, and each page represented one certificate, all certificates being for the same number of shares all five shares. In the Botany's own Record of Stocks, the Botany had a sheet of this form corresponding to a numbered certificate. This numbered certificate had a corresponding page in the Stock Record. When there was a transfer to be made for European stockholders, they were to deposit their certificates with the Vice-treasurer or a Director in Leipzig and with their endorsement on it, and thereupon the vice-treasurer or the Director sent notice to the treasurer in Passaic, the certificate. The form of notice contained in the Corporate book, which I identify was the form used.

A sample of this form of notice was introduced in evidence and marked Defendants' Exhibit M.

261 After receiving advices from the Vice-treasurer or Director at Leipzig in the form marked Defendants' Exhibit M, the transfer was entered on the record of stock on a sheet, a sheet

like this. A form of such sheet identified by the witness was offered in evidence and marked Defendants' Exhibit N.

There were transfers made to Stoechr & Sons, Inc., on the books of the Botany Mills in this record in the absence of either a certificate from Leipzig or the production of the stock certificate bearing the proper transfer at the Passaic office in America, and this was the only exception as far as I can remember. The only transfer on the transfer record of stock of the Botany Worsted Mills that appears without either the production of the certificate at Passaic or a certificate on file from Leipzig is the transfer to Stoechr & Sons, Inc., as far as I can remember.

By Mr. Bradley:

Q. Mr. Zimmerman, I hand you now a confirmation of transfer from Plagwitz-Leipzig dated January 15, 1915, signed by Georg Stoechr and purporting to certify that certain certificates mentioned therein had been lodged with him in Leipzig endorsed to Hans E. Stoechr, as trustee. Will you identify that as a letter coming to your knowledge?

A. Yes.

The Witness (resuming): I have seen that Certificate before. It was made in Passaic. It was made in the United States. George Stoechr at the time that Certificate came to my hands was here in the United States. This certificate and the certificates representing this stock were not exhibited to me in connection with that transfer.

Whereupon, certificate 236 was offered in evidence, and marked Defendants' Exhibit O, which was read into the record as follows:

"Certificate No. 236."

The stub reads:

262 "Confirmation of transfer; date February 15, 1915.
Certificate No. 51—1,050 (which I take to mean covers
1,000). 3,441-3,500, 4,061-5,000.
Shares No. 251-5250, 17201-17500, 20301-25000. To Mr. Hans
E. Stoechr as Trustee, New York City."

The confirmation side reads as follows:

"236—Plagwitz-Leipzig, January 15, 1915.

To the Treasurer of the Botany Worsted Mills, Passaic, New Jersey.

DEAR SIR:

I hereby certify that certificates No. 51-1050, 3441-3500, 4061-5000, representing shares No. 251-5250, 17201-17500, 20301-25000, of the capital stock of Botany Worsted Mills has been deposited with me properly endorsed to Mr. Hans E. Stoechr as trustee, New York,

with the request to cause the same to be transferred upon the books of the company to the above named endorsee.

Yours truly,

GEORG STOEHR,
Vice President."

By Mr. Bradley:

Q. Just identify please the confirmation of transfer in this same books dated February 1, 1915 signed by Georg Stoehr and purporting to certify the deposit of stock certificates mentioned therein endorsed to Max Stoehr as trustee?

A. Yes.

Mr. Bradley: I offer certificate No. 238 in evidence.

Said certificate was offered in evidence and marked Defendants' Exhibit P.

This exhibit reads as follows:

The stub reads:

"Confirmation of transfer—February 26, 1915.

Certificate No. 1051-1400, 2004-2017, 2041-2060, 2151-2171, 2861-2884, 2890-2898, 3161-3260, 5251-5369, 5389-5411, 5451-5750.

Shares No. 5251-7000, 10016-10085, 10201-10300, 10751-10855, 14301-14420, 14446-14490, 15801-16300, 26251-26845, 26941-27055, 27251-28750.

To Mr. Max W. Stoehr, as Trustee, Passaic, New Jersey."

263

This certificate itself reads:

"Plagwitz-Leipzig, February 21, 1915.

No. 238.

To the Treasurer of the Botany Worsted Mills, Passaic, New Jersey.

DEAR SIR:

I hereby certify that the certificates (numbers correspond with those mentioned in the stub) representing shares (corresponding to the numbers in the stub) of the capital stock of the Botany Worsted Mills has been deposited with me properly endorsed to Max W. Stoehr as Trustee of Passaic, New Jersey with the request to cause the same to be transferred upon the books of the company to the above named endorsee.

Yours truly,

(Signed)

GEORG STOEHR,
Vice President."

Mr. Bradley then asked the witness the following questions, to which the witness replied as follows:

Q. I call your attention to the fact that the other forms of certificates in this book are printed whereas these two, No. 236 and 238 are typewritten. Will you explain how that came to be?

A. As far as I remember, I received those certificates to be transferred. I filled in the numbers. I received the numbers and I filled them in on the typewritten form.

Q. At whose instruction did you do that?

A. It was either Mr. Hans Stoechr or Mr. Georg Stoechr, that I cannot remember any more.

Q. You do not remember which?

A. No; it is five years ago.

Q. Did you know that Mr. Georg Stoechr was in this country at that time?

A. I knew he was in this country, yes.

Q. Were or not the certificates themselves exhibited at that time?

A. I have not seen them.

264 Q. They were not exhibited to you?

A. No; they were not exhibited to me.

Q. In point of fact, Mr. Zimmerman, do you know of your own knowledge that those certificates to which Georg Stoechr certified in those two confirmations of transfers were not in this country at that time?

A. I did not see them.

Q. They all run to Kammgarn-Spinnerei Stoechr & Company Aktiengesellschaft, do they not?

A. Were in Kammgarn Spinnerei Stoechr & Company.

Q. And they aggregated, did they not, 14,900 shares?

A. Yes, they did.

Q. 10,000 of those shares were transferred to Hans?

A. Yes.

Q. And the remaining 4,900 to Max?

A. Yes; as trustee.

The witness then resumed:

When transfers were made at Passaic the practice about requiring the production of a certificate was that a certificate had to be presented to the Treasurer with the endorsement thereon.

Witness identified a Certificate of stock of the Botany Worsted Mills that had theretofore been transferred, merely for the purpose of showing the practice and testified that on the transfer on the back of the certificate appear in the rubber stamp these words "Transfer registered on the books of the company, dated January 30, 1914."

This was a uniform practice when certificates were presented for transfer at Passaic. I did not make out any new certificates at all.

By Mr. Bradley:

Q. I direct your attention now, Mr. Zimmerman, to one page of what you have mentioned as the record of transfer, Exhibit N. I am going to read you what appears on this page.

265 Mr. Vorhaus: Is this the transfer in February, 1917?

Mr. Bradley: This is a transfer of February 20, 1917. I will read this:

"Five shares of \$100 each, equal to \$500 of the capital stock of the Botany Worsted Mills, Passaic, New Jersey, incorporated 1889, under the laws of the State of New Jersey.

Certificate No. 51, shares 251 to 255 owned by Kammgarn Spinnerei Stoechr & Company."

Under that is a subdivision the caption of which is "Assessments."

"First installment of 25 per cent paid with \$125 for above named five shares at treasurer's office on September 30, 1890. C. O. Kepler, Treasurer."

Below that:

"Second installment of 25 per cent payment of \$125.00 for above named five shares at treasurer's office on June 1, 1890; Oscar Dressler."

"Third installment of 25 per cent payment of \$125.00 for above named five shares at treasurer's office, through Allgemeine Deutsche Credit Anstalt on March 1, 1891."

Signed by the Treasurer.

"Fourth installment of 25 per cent payment of \$125.00 for above named five shares at treasurer's office, through Allgemeine Deutsche Credit Anstalt on September 1, 1891."

Signed by the Treasurer.

Then there follows under the caption "Transfers" the following:

"The first is a red ink stamp covering the space printed for two blanks and reads as follows:

"It is hereby certified that satisfactory proof having been furnished that Kammgarn Spinnerei Stoechr & Company changed its name on June 27, 1899 to Kammgarn Spinnerei Stoechr & Company Kommanditgesellschaft, and further changed its name on June 30, 1911, to Kammgarn Spinnerei Stoechr & Company Aktiengesellschaft, the capital stock represented by this certificate for five
266 shares of stock has this date been duly entered on the stock and transfer books of the Botany Worsted Mills as owned by the Kammgarn Spinnerei Stoechr & Company Aktiengesellschaft, dated Passaic, New Jersey, March, 1912."

And signed F. W. Kuhn, Treasurer.

Then below that appears in a separate bracket partially printed and partially shown by a rubber stamp, the following:

"Transfer to Hans E. Stoechr as trustee (the words "Hans E. Stoechr as trustee" being in rubber stamp, and the words "transferred to" being printed), by deposit of certificate with (those being printed words) Georg Stoechr, Vice President (the last mentioned being a rubber stamp) dated Passaic, New Jersey, February 15, 1915 (the

words "Passaic, New Jersey" are printed and the date is in rubber stamp)." .

Then the rubber stamp signature of F. W. Kuhn, Treasurer.

On the margin in rubber stamp there appears the words "Transfer registered on the books of the Company, date February 15, 1915."

The next is as follows:

"Transferred to (printed) Stoehr & Sons, Inc., New York (rubber stamp) by deposit of certificate with (printed) George Stoehr, director (rubber stamp), Passaic, New Jersey (printed) February 20, 1917 (rubber stamp). Then signed with a rubber stamp "Hans E. Stoehr", and printed "Treasurer."

Mr. Marshall: It may appear that there are 2,089 pages to the same general effect as those representing the 10,000 shares of stock referring to the stock which was held in trust by Hans E. Stoehr and the remainder in the name of Max W. Stoehr as trustee; is that correct?

267 Mr. Bradley: Yes, and finally all transferred to the name of Stoehr & Sons, Incorporated, on the books of the Company.

The Witness (resuming): In reference to the transfer of these shares to Stoehr & Sons, Incorporated, New York, I have not seen any certificate from Leipzig on file at Passaic. There is none in that book nor have I seen any in the office of the Botany Worsted Mills. It is not in the record of transfer book which you handed me a few minutes ago. It was not presented to me nor did it come to my knowledge in any way. There was no evidence in the office of the Botany Worsted Mills at the time this transfer was made that there was any deposit of the certificate with Georg Stoehr, director; nor did I have or see any writing to that effect at all. There were some other shares that were transferred from Stoehr & Sons also where the memorandum was made to appear that there had been a deposit of a certificate when in point of fact we have no evidence of that deposit. This was at the same time, on the same date as part of the same transaction. That is the only instance as far as I know. I had charge of these books, this record and I made this notation of transfer to Stoehr & Sons, Incorporated at the direction of Mr. Hans E. Stoehr.

By the Court:

Q. I understand that when a Leipzig stockholder made a transfer, you got word of it from Mr. Georg Stoehr, you put his name in here "By deposit of certificate with Georg Stoehr, director" just the same?

The Witness: Yes.

The Witness (resuming): I recall the date, about 1915, January or February, when there was entered in the record book a
268 transfer of these 14,900 shares to Hans and Max Stoehr, trustees, 10,000 to Hans and 4,900 to Max. After that transfer was made, the dividends afterwards declared on that stock were credited and paid to Kanungarn Spinnerei Stoehr & Company for

the years 1915 and 1916, I think. The dividends on these shares after the transfer to Max and Hans were not paid to them or to either of them; they were all credited to Kammgarn Spinnerei and paid to them up to and including 1916—they were credited in their account current. They used to be paid to Kammgarn Spinnerei Stoechr & Company after the transfer to Max and Hans as trustees respectively but they were not paid as dividends; there were probably some other remittances made because it was a regular account current; they were credited to them in the account and then they were accounted for against some other transaction. After the contract of February 20, 1917 and the notation on this record of the transfer of the shares to Stoechr & Sons, Incorporated, the dividends of Botany Worsted Mills to Stoechr & Sons were credited on the special account; some dividends were paid to them but not on these shares. The dividends on these shares were credited on a special account. As to the 10,000 shares which were transferred to Hans E. Stoechr as trustee and as to the 4,900 shares transferred to Max Stoechr as trustee, all of which were finally transferred to Stoechr & Sons, Incorporated, no dividends were actually paid by Botany to Stoechr & Sons, Incorporated, on those shares. The dividends on those shares were merely credited to a special account. No dividends were paid out of that special account.

When asked by the Court "In whose name was the special account?", the witness responded "Stoechr & Sons, Incorporated, Special Account".

The Witness (resuming): I had first hand knowledge of an entry on the books of Botany Worsted Mills of a credit to its account on February 20, 1917, of \$5,000 and a debit against Stoechr & Sons, Incorporated, on the same date of the same amount, which entries were made by the instructions of Mr. Hans Stoechr.

209 The witness then identified a correct copy of the letter received on that date, which Mr. Bradley read into the record as follows:

"February 20, 1917.

Botany Worsted Mills,
Passaic, New Jersey.

GENTLEMEN:

Please pay to Kammgarn Spinnerei Stoechr & Company the sum of \$5,000 to February 20, 1917 and charge our account for the amount under advice.

Yours truly,

(Signed)

STOEHR & SONS, INCORPORATED,
HANS E. STOEHR,
President."

The Witness (resuming): It was credited to Kammgarn Spinnerei Stoechr & Company in their current account, the dollar account.

Mr. Marshall then asked the witness a few questions in reply to which he testified as follows:

We had two different accounts, a mark account and a dollar account. The dollar account was opened, and about the beginning of the war when the fluctuations in the exchange became too wide—formerly we used to have every trade on 4.20, and all the transactions were based on that rate, but after the war had started and the fluctuations in the foreign exchange became too wide, there was a separate account opened. Stoeck & Company, Incorporated, was a creditor of the Botany and if the Botany was indebted to them in excess of the sum of \$5,000, they therefore transferred \$5,000 of that credit to the Kammgarn Spinnerei on the books of the Botany.

Mr. Bradley then continued and the witness resumed:

At the time this letter was received I think there was a balance. I think there was a large transaction that was dated January 270 27th or January 15th and that would make a credit to Hans on the account of Stoeck & Sons.

Whereupon, Mr. Bradley, as counsel for the defendants, handed Mr. Zimmerman a transcript of the account with Kammgarn Spinnerei Stoeck & Company, special account, as per book record, account current, extending from December 1st, 1914 down to and including November 29th, 1916, and showing the account to have been closed under date of November 29, 1916, by transferring the balance then due by Botany to Kammgarn Spinnerei, amounting to \$270,817.43, to the account of Stoeck & Sons, New York. The witness then stated that the statement was a correct transcript from the original entries in the books of the Botany Worsted Mills. That particular entry bore the date of November 30th, 1916.

When asked by Mr. Marshall what the result of that was, the witness replied "There was a balance due to the Kammgarn Spinnerei Stoeck & Company on November 29, 1916 of \$270,817.43 from Botany and then was transferred to the credit of Stoeck & Sons, the partnership."

In response to questions put by Mr. Bradley, the witness resumed:

That was made by the instructions of Mr. Hans E. Stoeck. I did not see any writing from Kammgarn Spinnerei authorizing that transfer—none came to my knowledge; I acted upon instructions of Mr. Stoeck.

The statement was then marked Defendant's Exhibit Q.

271 The Witness (resuming): It was a part of my duties to attend the meetings of stockholders as they were held from time to time as I was Judge of elections.

By Mr. Bradley:

Q. State whether or not there was uniformly written authority from Kammgarn Spinnerei to vote this stock when it was voted at

these various meetings of the stockholders, and if not what exceptions were there?

By the Court:

Q. Was there always written evidence of the right to vote, always a written proxy from the Kammgarn Spinnerei to vote this stock?

The Witness: As far as I can remember.

By Mr. Bradley: As far back as you can remember there always was that?

The Court: He did not say as far back.

The Witness: I said as far as I can remember.

Mr. Marshall: He means so far as he can remember.

The Witness (resuming): I know now of this contract of February 20th, 1917; I did not know it at the time it was made. I knew that a corporation came into existence. The account current 272 between Stochr & Sons and Botany was simply noted on the ledger, "Stochr & Sons, Incorporated," since February 20— I think that in the accounts current it was marked February 28th. It is simply marked there without changing the account at all or opening up a new account. As to by whose instructions that was done, as far as I remember, Mr. Hans Stochr told me to mark the account "Stochr & Sons, Incorporated."

Direct examination.

By Mr. Quinn:

Mr. Quinn, as counsel for the defendants, handed the witness a statement of dividends paid to Stochr & Sons, New York; this sheet is first entitled "Dividends paid to Stochr & Sons," and then "Dividends paid to Stochr & Sons, Incorporated, New York," all of which the witness stated he prepared from the books in his possession and that the figures and facts therein were correct according to the books in his possession. Whereupon, Mr. Quinn offered it in evidence.

By Mr. Vorhaus:

Q. This statement here I call your attention to is supposed to have been acknowledged before a notary public; is that in the book?

A. That is a notation that is in the book.

Q. Who made the notation?

A. My assistant at the time he made the entry in the journal.

Q. Is that entry in the book or is that an inference somebody drew?

A. That is an inference (indicating).

Q. Is not that other part an inference too?

A. It is in the books.

Q. Which is it, is it in the books or is it an inference?

A. It is in the books; it is in the entry in the books.

273 Mr. Quinn, as counsel for the defendants, then asked the witness whether every word of that statement is in the books, and, the witness responding "Yes," Mr. Quinn again offered it in evidence and it was received in evidence and marked defendants' Exhibit R.

The Witness (resuming): Referring to Exhibit R, the 1,120 coupons represented 5,600 shares and where the 1,120 appears twice in the statement of dividends paid to Stoeck & Sons, the partnership, that means that was coupon No. 52 of 5,600 shares and coupon No. 53 of 5,600 shares, and so again referring to Exhibit R containing the statement of dividends paid to Stoeck & Sons, Incorporated, the figures 258 coupons refer to 1,290 shares and again the 258 refers to 1,290 shares; and then the 880 coupons refer to 4,400 shares, and then the 880 coupons refer to 4,400 shares. Dealing with the period on the second part of this statement, Exhibit R, Stoeck & Sons, Incorporated, had certificates in this country for the 1,290 shares and hence there was a distinction made in regard to dividends between the dividends on the 1,290 shares and the dividends on the 4,400 shares.

274 I have prepared a statement from the books of the Botany Worsted Mills regarding the transfer of the 5,600 shares of Botany Worsted Mills stock into the name of Stoeck & Sons and from them to Stoeck & Sons, Incorporated and the paper which I hold (Mr. Quinn handing paper to witness) represents what appears in the books of the Botany Worsted Mills; there is nothing in that statement that does not appear on the books of the Botany Worsted Mills.

Whereupon, Mr. Quinn, as counsel for the defendants, offered the above statement in evidence and it was marked Defendant's Exhibit 8.

The Witness (resuming): With reference to the first page of Exhibit 8, out of the 4,180 shares, 250 were deposited with the treasurer for transfer in Passaic.

275 By Mr. Quinn:

Q. As a matter of fact, this Exhibit 8 deals with the 5,600 shares, and is it not a fact that out of that 5,600 shares certificates for 1,290 were deposited with the treasurer in Leipzig.

Mr. Vorhies: We object to that.

Mr. Quinn: I do not mean Leipzig; I mean Passaic; the treasurer in Passaic?

The Witness: No; not 1,290.

The Court: You have already agreed on that very early in the case. It has been agreed at the very outset that out of the 5,600 only 1,290 were in this country.

Mr. Quinn: I want to show the physical facts in regard to the transfer.

The Court: What do you want to show?

Mr. Quinn: That the only shares that were transferred here so far as the Botany is concerned was the 1,290.

The Court: That is already in.

Mr. Vorhaus: The whole thing was transferred.

The Court: You agreed that only 1,290 certificates were in this country.

Mr. Vorhaus: Yes.

Mr. Quinn, as counsel for the defendants, then handed the witness a paper on one sheet entitled "Dividends paid on 14,900 shares from February 20, 1917 to January 24, 1920, which the witness identified, stating that he had prepared it and that it was a correct statement according to the books of the company under his direction. Mr. Quinn then offered it in evidence and it was received in evidence and marked Defendants' Exhibit T.

The Witness (resuming): I prepared a statement of the book value of the capital stock of the Botany Worsted Mills as of certain dates, together with Mr. Helmer and also prepared a statement of the book value of the stock of the Botany Worsted Mills as of November 30th, 1917.

By Mr. Quinn:

Q. What was the book value per share of the stock of Botany Worsted Mills on February 20th, 1918, as of November 30th, 1917?

Mr. Marshall: It might be desirable to know what was included in the book value. I do not consider it of any consequence now.

The Court: I think if they raise the objection that they are entitled to find out how he reached it.

The Witness (resuming): We reached the book value as follows: We took the capital stock, the reserve fund of \$1,050,000, and the surplus and divided the total by 36,000 shares; that gives the value per share.

By Mr. Marshall:

Q. May I ask you whether that included hard assets?

A. I do not know.

In answer to questions put by the Court, the witness stated:

277 There is no item on the books of good will; there is no item on the books but the stock on hand, accounts receivable, real property and plant.

The Witness (resuming): In making up the book value and computing the book value, I took no account and made no allowance or gave no allowance for an increase on any installment for good will.

By the Court:

Q. Nothing like patents or trade-marks, no items of that sort?

A. No.

The Witness (resuming): The book value as of November 30, 1917, was \$317.98238.

By Mr. Quinn:

Q. And as a matter of arithmetic, on that basis what was the book value on November 30, 1917 of 14,900 shares of the stock of the Botany Worsted Mills.

A. The book value of the 14,900 shares is \$4,737,937.46.

Q. Now then, one fifth of that was how much?

A. One fifth of that was \$947,587.49.

Q. Will you kindly add to that the amount of the dividends——

The Court: Have you not got that all on your statement?

Mr. Quinn: If they want to take it, that statement gives the whole story.

The Court: They will take that.

278 Mr. Vorhaus: Put it in.

Whereupon, said statement was marked Defendants' Exhibit U.

Mr. Vorhaus: Your Honor understands we do not conceive that his estimate of how they figured the book value is binding on anybody.

Thereupon, Mr. Quinn, as counsel for the defendants offered in evidence a list of two sheets of paper giving in column form the directors and officers of the Botany Worsted Mills beginning March 17, 1914, which the witness identified and stated he had prepared according to the books of the company, and that it was correct according to the books of the company. It was then marked Defendants' Exhibit V.

The Witness (resuming): I have searched the letter files of the Botany Worsted Mills for correspondence between Kammgarn Spinnerei and the Botany Company in the years 1915 and 1916.

By Mr. Quinn:

Q. I show you a letter purporting to be by Kammgarn Spinnerei dated the 2nd of March, 1915 to the Botany Worsted Mills and bearing the stamp of the accounting department March 31, 1915; another letter dated March 9, 1915 from Kammgarn Spinnerei to the Botany Worsted Mills stamped "Received May 31, 1915;" another letter from the Allgemeine Deutsche Credit Anstalt dated the 5th of June, 1915 to the Botany Mills and stamped "Received June 28, 1915;" another letter dated June 5, 1915 from Kammgarn Spinnerei Stoehr & Company to the Botany Worsted Mills stamped as received in the accounting department June 22, 1915.

279 The Court: You may identify those afterwards; are those the only letters?

Mr. Quinn: No. I will identify them later.

The Witness (resuming): These twelve letters were the letters that I have found relating to dividends and financial transactions between the two companies.

Mr. Quinn: I offer those twelve letters as one exhibit.

Mr. Marshall: I object to them as immaterial.

The Court: I will exclude them; you may have them marked for identification.

Marked Defendants' Exhibit W for identification.

Mr. Quinn: I assume your Honor will rule the same with regard to the answers by the Botany to the Kammgarn Spinnerei.

The Court: Yes; you may have those marked.

The Witness (resuming): I have searched the records of Botany Worsted Mills for any written power of attorney purporting to be given by Kammgarn Spinnerei to Hans E. Stoehr for the years 1915, 1916, 1917, or 1918 but I have found no such authority nor any copy of a resolution from Kammgarn Spinnerei's board of directors, nor anything under the seal of the company conferring authority or purporting to be, on Hans E. Stoehr.

280 By Mr. Marshall:

Q. You made this search among the papers and documents in the Botany Worsted Company?

A. Yes.

By Mr. Quinn:

The Witness (resuming): I do not think there was a vice treasurer at Leipzig of the Botany Worsted Mills in either 1914 or 1915 or 1916 or 1917. There was a vice treasurer elected by the board at one of those meetings, Hans E. Stoehr, but not at Leipzig; there was no vice treasurer at Leipzig elected in any of the years from 1914 to date. In reference to the book entitled, "Confirmation of Transfers," there was a corresponding book in Germany, both books having been printed in the United States.

In answer to a question by Mr. Quinn as follows:

"Referring to the certificate on stub No. 236 which purports to be dated Plagwitz-Leipzig, January 15, 1915, and No. 238, which purports to be dated Plagwitz-Leipzig, February 1, 1915, I call your attention to the fact that between those two typewritten papers, one No. 236, and dated January 15, 1915, and one Numbered 238, and dated February 1, 1915, there is a printed one, Number 237, dated January 28, 1915, and ask you if you can explain why the two certificates, 236 and 238, do not follow each other?"

the witness resumed:

281 The one on Transfer Exhibit O was confirmed February 15th, the one dated January 15th was confirmed February 15th, and the second one, Exhibit P, was confirmed February 26th; the intervening one is dated April 12th. The reason why they do not follow consecutively, why the one of April 12th comes in

between the one of January and February is that that transfer was held up on account of there was an inheritance tax connected with it. We had to get the permission from the Comptroller to transfer it. I looked that up and I made a copy of the letter. Georg Stoehr or Hans E. Stoehr gave both Number 236 and 238 to me in blank and instructed me to fill in the blanks, which I did in my own handwriting, filling in the words in Number 236, of January 15, 1915. When the typewritten form was handed to me it was all blank except the typewritten words, and then in number 238 I also filled in in my own handwriting the words "February 1, 1915." I also filled in all the numbers. I told Mr. Bradley that either Mr. Hans E. Stoehr or Mr. Georg Stoehr told me to fill in the words as to the assignee, Mr. Hans E. Stoehr, as trustee, but I cannot remember which; I did this according to the directions, and the same as to the Number 238, Mr. Max W. Stoehr as trustee. I cannot explain now any more how number 236 was entered on the stub on February 15th and 238 not entered until February 26th; that is five years ago. I must have received instructions. I do not think that I received both of these certificates at the same time, at the same date and I do not know whether I received them from the same person; I cannot recollect that. I cannot state any reason why the dates in 236 and 238 should be different, one January 15, 1915, and the other February 1, 1915; I cannot recollect when I was told to fill those in according to that date why they were to be filled in according to those dates. I made the whole stubs, all the entries in the stubs of the No. 236 and 238, except those that are printed and, as far as I know, the typewritten parts of those two certificates were the only times in either of the two books of confirmation of transfer, where such typewritten forms were used. I have not looked through the books but I will do so. I did not inform myself about such a transaction as this before filling in blanks in this way; heretofore I received the printed ones from Germany; certified by a director from Germany or a vice treasurer, when there was a vice treasurer, and then made the entries in the stub and then confirmed direct to Leipzig. I made it out, I do not know whether it was mailed to the director or the corporation in Germany in this case. I gave the two papers to Mr. Hans Stoehr. These two confirmations would be dated the same day as the transfer. I handed them, as far as I can remember, to Mr. Hans E. Stoehr, and then he probably gave them to Georg. What he did with them I do not know. As to No. 236, that would be February 15, 1915, and as to 238 it would be February 26, 1915. I cannot tell whether those two certificates were typewritten in the Passaic office or in the New York office. As I recall (looking at 236 and 238) they were written on the dates that they purport to be written, February 15th. There is no significance in the fact that the entries in the stub are in purple ink, and the entries in my handwriting in the bodies are in black ink; that does not mean anything to me that they were made in different places. It may be that that was written with conchine ink. It is the custom of the company to always send a press copy with the

following mail, and I think that is probably why that was written. I do not think that I would write the rest in copying ink if I did that, because that would not be copied. The one that is in the
 283 stub, that will probably be written in copying ink; that is the best explanation I can make for the difference in those.

By Mr. Quinn:

Q. Referring to the transfer in the special account of Kammgarn-Spinnerei, with Botany Worsted Mills, which is Defendant's Exhibit Q, I would ask you whether there was any resolution of the Board of Directors of the Botany Worsted Mills authorizing that transfer on November 29, 1916, from the account of Kammgarn-Spinnerei to Stoehr & Sons, the partnership.

The Witness (resuming): There was no resolution of the Board of Directors to my knowledge of the Botany Worsted Mills authorizing the transfer of \$270,817.43 on November 29, 1916, from the account of Kammgarn-Spinnerei to the partnership, Stoehr & Sons. At the top of said Exhibit Q appear the words "Special Account" and Karl Jacobson. Karl Jacobson was the mailing address in Copenhagen and the Botany Worsted Mills in communicating with Leipzig toward the end of the war, as the war went on, communicated through Karl Jacobson and received communications from Kammgarn-Spinnerei through him. That was in the later stages, before we came into the war. As the British censorship became more difficult, this method came into vogue in 1915. I have searched the files of the Botany Worsted Mills for a letter authorizing Hans E. Stoehr to deal with certain stockholdings of Kammgarn-Spinnerei but have found none. I have also searched the files of Botany Worsted Mills for a letter authorizing Hans E. Stoehr to deal with the balances of Kammgarn-Spinnerei, but have found none.
 284 The search covers the years 1914, 1915, 1916, and so on; there was no mail after 1916.

The Court: I understand there was no communication received during the year 117, before April 6th, at all.

The Witness: No.

In answer to questions by Mr. Marshall, the witness stated:

As far as I know there was nothing found in the records of the Botany Company. They may have received a wireless, but there is nothing in the records.

By Mr. Quinn:

Q. Coming down to the transfer of February 20, 117, from the name Kammgarn Spinnerei to Stoehr & Sons, Incorporated, of 14,900 shares, will you state whether there was any confirmation to Kammgarn Spinnerei from the Botany of those transfers?

By the Court:

Q. Was there any copy of a letter of confirmation from the Botany Mills to the Kammgarn Spinnerei of the transfer of the 14,900 shares on the books of the Botany Mills as of February 20, 1917?

A. No, there is none.

The Witness (resuming): I do not know whether I saw Georg Stoehr in the United States in February or January, 1917; 285 I remember seeing him in the early part of 1915. The Botany Worsted Mills never received any certificate from a Vice-treasurer at Leipzig or from a Director, resident at Leipzig on or after February 20, 1917, certifying to a transfer or assignment from the Kammgarn Spinnerei to Stoehr & Sons, Incorporated. I have carefully searched the files of the Botany Worsted Mills to find any paper, letter, resolution, document, from, or purporting to be by Kammgarn Spinnerei Stoehr & Company relating to the transfer of the 14,900 shares from its name on February 20, 1917, to Stoehr & Sons, Incorporated, but have found none. I have also searched the files of the Botany Worsted Mills for any letters or correspondence or order from Stoehr & Sons, the partnership, regarding the transfer to Stoehr & Sons, Incorporated, of the 5,690 shares, but have found none. I transferred the 5,690 shares from the name of the partnership Stoehr & Sons to the name of the corporation on the direction of Hans E. Stoehr personally to me. Some of the certificates were delivered for transfer. 1,290 out of the 5,690 shares were transferred from the name of the partnership Stoehr & Sons, to the name of the corporation, on the sole direction of Hans E. Stoehr, personally to me. I have searched the files and the records of the Botany Worsted Mills to see whether any demand was ever made by Mr. Max W. Stoehr or anyone on his behalf on the Botany Worsted Mills or any of its officers or directors for the re-transfer of the 14,900 shares to Stoehr & Sons, Incorporated, but have found none. As far as I know the Botany Worsted Mills received no protest by or on behalf of Max W. Stoehr in writing against the issuance of the 14,900 shares to the Alien Property Custodian.

286 Cross-examination.

By Mr. Vorhaus:

The Witness (resuming): At the time I made the transfer of the \$270,000, that was due to the Kammgarn Spinnerei to Stoehr & Company, Inc., I did not have any authority or any letter from Kammgarn Spinnerei consenting to the transfer; the Botany wrote a letter confirming the transfer to Stoehr & Sons. I made that transfer on the say-so of Hans E. Stoehr, whose authority I did not question. Botany wrote to Stoehr & Sons, but I have no record of whether they wrote to Botany that they made the transfer

to Stoehr & Sons or that Botany wrote to Kammgarn Spin-
neri. There is no doubt that these new certificates, standing in
the name of Hans and Max as trustees, were made on the date they
bear in 1915, February, 1915, and February 26th.

Answering a question by the Court, the witness stated:
The entry on the books was made on those dates.

By Mr. Vorhaus:

Q. After that entry was made on those books in 1915 and
287 1916, whenever that 14,900 shares of stock was voted on, it
was voted on by Max and Hans, was it not?

Mr. Quinn: I object to that; the votes are the best evidence on
that.

The Court then asked the witness whether he could answer that
question, to which he replied: I can, yes; the 10,000 shares were
voted by Mr. Hans E. Stoehr as trustee in the meeting of March
16th and the 4,900 shares were voted by Mr. Georg Stoehr.

In answer to a question by Mr. Quinn the witness stated:
I am referring to 1915, the time the transfer was made, because
the list of the stockholders was made up twenty days prior to the
meeting.

By Mr. Vorhaus:

The Witness (resuming): But after 1915, as far as I can recollect,
whenever those stocks were voted on, they were voted on by Max
and Hans, with the 14,900.

In answering questions by the Court, the witness said:

The only year was 1915; in 1917, it was Stoehr & Sons; the state-
ment would show that.

The Witness (resuming): 10,000 had been transferred and were
voted upon by Hans, and the other 4,900 had not within the twenty
days prior to the stockholders' meeting.

288 A. MITCHELL PALMER, a witness called in behalf of the de-
fendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Bradley:

I held the office of Alien Property Custodian from about October
22nd, 1917, to March 5th, 1919. I think I am right about October
22nd. It was on or about October 22nd, I was commissioned.

By Mr. Bradley:

Q. This suit concerns 14,900 shares of the capital stock of the Botany Worsted Mills, and involves, among other things, a contract purporting to be made by Kammgarn Spinnerei Stoehr & Company, a German corporation, with Stoehr & Sons, Incorporated, a New York corporation. It appears that directors nominated by you were installed in Stoehr & Sons, Incorporated, namely, James N. Wallace, Francis B. Garvan, Andrew B. Duvall. In the bill that is averred that this is a suit by the minority stockholders, that said defendant directors of said Stoehr & Company, Incorporated, are the creatures of, and were nominated and elected by and through the orders of said defendant, A. Mitchell Palmer, as Alien Property Custodian, and to carry out his instructions, and that it would be useless to make a demand upon such defendant directors to institute this suit, and for this reason, he is obliged to appeal for relief to this Court: Please tell the Court whether you at any time gave any instructions to these, or any other directors, concerning the action they should take with respect to the matter committed to those gentlemen's direction.

Mr. Marshall: We object. The allegation here is that these directors, having been nominated by him, any attempt to
289 ask them to present this suit would be useless.

The Court: I will take it.

The Witness (resuming): No instructions were ever given to the Directors of the Company by the Alien Property Custodian as to any acts that they should or should not perform; they were originally installed after their nomination by the Alien Property Custodian to represent the stock which had been transferred to him, or which was enemy owned and therefore was properly to be transferred to the Alien Property Custodian. But after they were installed they were under our general instructions to all directors, given a free hand to exercise their own business judgment and discretion with respect to all matters affecting the company's business and they were so instructed. I recall Mr. Wallace. I know Mr. Duvall very well and also Mr. Garvan.

I never directly or indirectly took possession of any of the properties of either of these defendants.

Mr. Vorhaus: We move to strike that out. The acts, if your Honor please, which constituted possession are before the Court. It is a conclusion of law and a question of law whether they were taken by due process of law.

The Court: Of course, you do not get possession by taking over the stock and putting in the directors.

Mr. Vorhaus: They are in possession, if your Honor please.

The Court: If you will concede that no act was done, that
290 you will claim nothing under your bill more than the seizure of the stock and the appointment and election as stockholders of the directors, that will answer the objection.

Mr. Marshall: We do not claim any other possession than that taken of the control of the stock, and through the control of the stock, the election of the directors. We do not claim any individual possession.

Mr. Bradley: We understand that to be a concession there was no physical possession taken of any of the property of the company?

Mr. Marshall: By Mr. Palmer. The directors merely control the corporation. That is as far as we can go.

The Court: I shall not rule the directors had possession of the assets. The corporation has possession of the assets. They are merely the agent of the corporation. Certainly, the fiction of the corporate entity goes so far as that.

The Witness (resuming): I did not authorize anyone under me or in my organization to control the judgment and discretion of directors in this, or any of the companies under my control. In fact, I was very careful to have directors understand that they were expected to exercise their own judgment in the operation of all these enemy companies, in which they had been installed; that this pair of companies, this Stoehr Company and the Botany Company have such large properties I took the trouble to attend the first meeting of the Board of Directors of the Botany Company after the directors representing the Alien Property Custodian, as owner of the

291 enemy stock which had been installed, and at that meeting I expressly stated to all the directors that it was our wish and purpose and desire that they should feel themselves perfectly free to exercise their own judgment in relation to all business matters of the corporation; that I had invited the biggest business men, bankers and manufacturers whom I could persuade to accept these directorships that I desired to place upon them the duty and the responsibility of properly managing this great business, and that having that desire in my mind, I expected also to give them entire power to do so. Mr. James N. Wallace was then president of the Central Union Trust Company, a very large bank in this city, one of the leaders, I think of the Financial World in New York. The other men were all men of high business standing also.

Mr. Bradley, as counsel for the defendants, then stated to the witness that one of the conditions of the sale of the stock of the Botany Worsted Mills was that no one would be permitted to inspect the plant until he should have qualified as a bidder or shall have deposited with the director of sales a certified check for \$25,000 and requiring a cash deposit of \$100,000 in order to qualify to bid at the sale; also there were 24,000 and odd shares offered by the Alien Property Custodian and 1,290 shares offered by Stoehr & Sons, Inc., at the same time, at the same sale. He then went on:

Q. Then there is a criticism on legal grounds that the bidders were confined to American citizens, and also criticism of the reservation of the right to reject bids. There appeared in the prospectus in which they advertised the sale a statement of the history of the Bot-

292 any Worsted Mills, and it concerns a statement of a report by Certified Public Accountants, and also a valuation of physical assets by independent engineers. Will you explain in your own way to the Court how and why these conditions were imposed and the reasons for accompanying these offers of sale by the reports of the accountants, and by the appraisement of engineers?

Mr. Marshall: That is objected to as immaterial and irrelevant. The documents are in evidence and show just exactly what transpired, and the propriety of the actions should be determined by the Court and not by any explanation that may be made with regard to the reasons, as stated by the witness.

The Court: Perhaps his purposes are not material, but certainly the circumstances which have justified those terms are material. I understand they are challenged?

Mr. Marshall: Yes, sir, they are challenged.

The Court: The challenge is arbitrary. If so, the circumstances which would justify the stand would certainly be proper in answer to that challenge. I will take that.

Mr. Bradley: We submit these conditions were imposed pursuant to advice of men of experience in the business world to secure a fair sale.

The Court: I will take it.

293 The Witness (resuming): Of course, as to the condition of the sale that the property would be sold only to American citizens that was in compliance with the terms of the Statute under which we sold it, the amendment to the trading with the enemy act giving the Alien Property Custodian the general power of sale of this enemy property and that expressly limited the sales to American citizens. The same answer may be made with reference to the condition of the sale permitting the rejection of bids under the Act, the President had the right to reject any or all bids, and of course, the Alien Property Custodian was acting in these matters under the delegated authority from the President of the United States.

As to the condition relative to the requirement of a certified check before the prospective bidder was permitted to examine the property, and another and larger check before he would be permitted to bid upon the property we found that condition necessary in all details, first to protect the properties from the run of casual businesses who had no idea of purchasing, who would want to scrutinize and inspect the plants and business while these advertisements were running. There did not seem to be any good reason why the general public should be invited in to examine these plants. It was not fair we thought to the purchaser, whoever he might be, that the competitors of the concern might have free access to the books and plants and business secrets, if you please, as might be developed by an examination of the plant. I speak generally and not with particular reference to this one case. It was, of course, a general rule, and was a condition of every sale that the Alien Property Custodian conducted. As it worked out, in practice, no good-faith, honest bidder was de-

terred from visiting the plants and making examination by reason of the fact that he had to put up a modest certified check, nor, 294 so far as our experience went, was any bidder deterred from bidding at the sale from reason of the fact that he had first to deposit a check before the bid. The amount——

Mr. Marshall: I move to have this latter statement stricken out as being a conclusion and not being any proof of circumstances.

The Court: It is a conclusion of the witness. He may state what basis he has for it, if he wishes that way.

Mr. Marshall: About the bidders being deterred from visiting the plant and being deterred from bidding at the sale.

The Court: Yes, I will strike that out.

The Witness (resuming): The bidders, themselves, told our Sales Department, and many of them told me that it was a splendid requirement for their protection.

Mr. Marshall: I request that that be stricken out. In this particular case the property has not been put up for sale.

The Court: The point is as to whether in the general practice as to which he states he adopted any fair basis, and I think that his experience removes the charge that this was an arbitrary and not reasonable provision. In other words, if you are certain an official had no basis, it is fair to say what, in prior instances had been the basis in the mind of the officials who are proposing it in this for making it a general rule, I will take it.

295 The Witness, resuming: We had what we call our sales organization in the Alien Property Custodian's office which was built up like this. A committee of leading men in the organization at Washington, consisting of five or six was known as the Washington Sales Committee. On that Committee the heads of the most important bureaus of the Alien Property Custodian served. They primarily considered whether the property should be sold, on what terms it should be sold, when, and so forth, and in general considered the advisability of a sale, and the character of the sale when made. If they passed it, it went to our Bureau of Sales, whose headquarters were in New York, where it was submitted to another Committee called an Advisory Sales Committee which was composed of five distinguished gentlemen who answered to my call to service in that regard, and served throughout my incumbency of the office. That committee consisted of Mr. Otto T. Bannard, Chairman of the Board of the New York Trust Company, Mr. Cleveland H. Dodge, Judge Ingraham, Ralph Stone, President of the Detroit Trust Company of Detroit, Michigan, and B. H. Griswold, junior head of the firm of Alexander Brown & Sons of Baltimore.

Those gentlemen were advisers and no sale was held except on terms and conditions approved by them and no sale was approved by the Alien Property Custodian except it was first approved both as to the character of the purchaser, and the adequacy of the price by this advisory sales committee. The advisory committee met

weekly during our busy selling season and devoted a great deal of time and attention to these matters of the terms of sales and the character of the purchasers and the adequacy of the price of all of these properties. So that the Alien Property Custodian in fixing the terms of these sales, and in making the sales, and in accepting the purchasers or in advising the President to reject bids, acted
256 always upon the counsel and advice of these two committees, one of which was Governmental and the other was outside and purely advisory and the members of both of which were devoting a large part of their time and splendid talents to that aid to the Government. This sale, in its preparation and offer for sale went through the general process. After this property was advertised for sale, Mr. Louis Marshall conferred with me at Washington. As I recall our conversation touching the sale, Mr. Marshall came to me on behalf of Max Stocher and some associates, possibly, asking for an adjournment of the sale after the advertisement had been running some time, and he very vigorously urged that the sale should be adjourned in order that Mr. Stocher might complete the formation of a syndicate which he was working on to purchase the property. He said, if I would not agree to continue the sale, of course, they would go into court to restrain the sale, and allege the unconstitutionality of the law; that was before the institution of the suit after the sale had been advertised.

Cross-examination.

By Mr. Marshall:

The Witness (resuming): I think I nominated as the directors of Stocher & Sons, Incorporated, originally Mr. James N. Wallace, Francis P. Garvan and Andrew B. Duvall. I do not think I named Mr. Kieffer as another member of the Board of Trustees, I think when the vacancy occurred the Board elected him. I do not think I either approved or disapproved of his appointment. I do not think it came to me for any action. It may have been reported to me, and it was not disapproved. I think Paul Kieffer is an associate of Mr.

Quinn, I do not know him personally. Mr. Quinn was counsel for the Botany company and possibly for Stocher & Sons,
257 I do not know; if he was counsel, the company designated him. He was elected by the directors of the Botany Worsted Mills and I think it possible that some of them conferred with me about it, discussed it with me. He was either suggested by me or they referred the subject to me and I approved of his appointment.

Mr. Duvall is a Washington lawyer. He was connected with the office of the Alien Property Custodian early in the work of the Alien Property Custodian, doing legal work in the department. He might have been such an attorney at the time he became a director of Stocher & Sons, Incorporated; he resigned about the time he became a director in these various companies. Whether he resigned before he was elected or after he was elected, I do not know. I think he became a trustee of both the Botany Worsted Mills and Stocher & Sons, Incorporated. He was in Mr. Brodhead's division.

Mr. Francis P. Garvan was connected with me in the office of the Alien Property Custodian; he was chief of the bureau of investigation and he was located in the New York office. He continued to be such chief until he became Alien Property Custodian as my successor. At the time he was designated a director of Stoehr & Sons, Incorporated, he was connected with my office as Alien Property Custodian. In connection with the adoption of these terms of sale of the stock of the Botany Worsted Mills, I signed the order of sale, and that meant I passed upon and approved of them, but they were submitted to me as the advice and counsel of the sales committees that I have described to you. I took this action and determined the time and place of sale and also the terms of sale by putting my signature to the order which had been prepared in the way I mentioned. I had nothing to do with the formulation of the order and did not fix the time or the place or anything of that sort. I did not think anything about the possibility of the Board of Trustees of Stoehr & Sons, Incorporated bringing an action on behalf of Stoehr & Sons, Incorporated to restrain me, as Alien Property Custodian, from — these 14,900 shares of the stock of the Botany Worsted Mills Company which had been seized by me. I would expect them to do so, if it were a proper exercise of business judgment with respect to the operation of the company. There was no reason why they should not attack my acts as Alien Property Custodian in disposing of this property; we did have boards of directors who did that, for instance, one was the Vogelstein Company. I cannot remember the name of the company. They did not bring a suit, but they passed a very vigorous resolution, and put it up to the Alien Property Custodian. There was no sale; it was not with respect to sale, but with respect to the action of the Alien Property Custodian in taking the property. I did not change the Board of Directors which I had originally nominated nor did I make such a change in that Board subsequent to these resolutions that I have referred to. I am pretty sure I did not—I nominated some nine or ten hundred men as directors of these corporations, and it is hard for me to remember. I am just saying that as illustrative of the independence of all these directors. If Mr. Duvall, Mr. Garvan or Mr. Kieffer thought it was not a proper thing for me to do, I could not have objected if they had brought an action to restrain me from selling these 14,900 shares of stock: I would have expected them to do it, if it was a proper exercise of their business judgment in the management of the corporation. It was their duty to protect their property and the rights of the property. What would have been proper for them to do with regard to the sale of the 14,900 shares of stock would have depended entirely upon the facts and the law as to ownership of the property. While Mr. Garvan for instance, was associated with me in my work, he was not appointed because he was a clerk in my office or anything of that sort, he was a so-called dollar a year man; his services were being given to the Government as part of the war work and he was working in many other relations than merely the Chief of the Bureau of Investigation in my office. We were relying upon him to

handle a great many business transactions. The fact that he was in my office did not mean I could control him any more than I could control Judge Ingraham, for instance, or Mr. Bradley. I made no written memorandum of an interview which I had with Mr. Marshall in Washington, which I spoke of before but I think I have stated it correctly. It took place while the advertisement was running and before the date of the sale. Mr. Marshall did not state in that interview that he could see no reason why there should be any sale of this stock at this time, and that he asked that the sale should go down; he asked that the sale should be postponed in order for Mr. Stocher to get his syndicate completed to become purchasers. I do not think there was a time mentioned—he just asked for a temporary postponement. He might have said in substance that he could see no reason for the sale, that there was nothing to be gained by the Government and that I, as Alien Property Custodian, had the custody and possession of these shares of stock and that the business was a business which was of such a character that

300 it would be a profitable business, and there was no occasion for the sale of these shares of stock; the part which was impressed most upon my mind, however, was the suggestion that the sale—or the request that the sale should be postponed until Mr. Stocher and his associates could get their syndicate together, and, very frankly, that was impressed upon my mind because it was a rather remarkable suggestion on Mr. Marshall's part, if that was not done, he would, of course, file a bill and attack the constitutionality of the law, and that seemed to be so inconsistent with forming a syndicate to become a purchaser at the sale, I could not forget it; that is what was impressed on my mind. I think Mr. Marshall did argue that the law under which we proposed to sell was unconstitutional or that that was what he would allege in your bill; I believe he did not contend that the act would be unconstitutional. I didn't make any written memorandum of the conversation or with respect to Mr. Marshall's statement about the formation of a syndicate by Mr. Max Stocher. I stated the substance of his conversation immediately to some of my associates in the office which further impressed it upon my mind. That is over a year ago.

It was stipulated between counsel for both parties that the defendant, A. Mitchell Palmer, was appointed Alien Property Custodian and duly qualified on October 22nd, 1917 and that he continued in that office until on or about March, 1919, when the defendant, Francis P. Garvan, was duly appointed Alien Property Custodian and qualified and has acted as such up to the present time and is now Alien Property Custodian.

Mr. Marshall: I think in the course of his testimony Mr. Palmer made the statement that he did certain things under delegation from the President. That is a conclusion, and I ask that that be stricken out. If there was such a delegation it must be in writing.

The Court: I think that is true, but I have no doubt there is a proclamation.

Mr. Marshall: I want that stricken out.

The Court: Very well.

Mr. Ingraham: We will produce the proclamation or the order of the President under which we acted.

HARRY P. BARRAND, a witness called in behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Quinn:

I am a resident of New York and one of the Vice-Presidents of the National Bank of Commerce of New York. I have been connected with that bank for twelve years in the Foreign Department for that whole term with the exception of three years, from clerkship to assistant managership, assistant cashier and second vice-president. I am with that bank now. It is part of my duties in the Foreign Department, as one of the managers of it, to be familiar with and know the facilities of communication by cable and wireless and it was in 1914 with Europe and particularly with Germany. That was part of my function and business. The National Bank of Commerce did a large volume of business with German banks and institutions prior to the outbreak of the war, in August, 1914, and
302 subsequent to and down to the entry of the United States into the war on April 6, 1917. They had accounts with some of the largest banking institutions in Germany, with nearly all of them, and received and remitted money by cable transfers and by wireless. I think it was on August 5th, 1914 or thereabouts that Great Britain cut the cable wire to Germany which necessitated all their cable communications there going through Great Britain or France, and in going through Great Britain or France they had to be written in plain English or French and the full addresses of the addressee and the sender given and any other Government requirements complied with to show that they were not designed for Germans by the French and English Governments. That continued down to January 5, 1915. Codes were permitted to Great Britain and England but codes were not permitted — any other countries, only upon showing that the codes were for British subjects. Codes were allowed to France but only on the same conditions, only for use of French subjects and only sent in accepted codes of which the Governments and the Government censors had the keys. This cable condition continued down throughout the war and continues to date. Direct mail communications between this country and Germany were to go through up to the early part of 1915; indirect through neutral countries, they were going through to the latter part of 1916.

In answer to questions by the Court, the witness stated:

There were regular communications if the means of communication were established, for instance, if German subjects or German concerns had representatives in the Scandinavian countries and

303 could deceive the British censors, why communication did continue that way. It had to be surreptitious. These mails would go from Scandinavia generally by Scandinavian boats, although they are sometimes held at Kirkwall, and sometimes held at Halifax. It was a question of concealing the character of the communication. They were all opened either at Kirkwall or Halifax, whether they actually, physically did it, I do not know. This also applied to Scandinavian boats. Scandinavian mails to my recollection did not go out on British ships. Britain did not allow ships of the Scandinavian countries to come from England direct to this country, but one or two did. If they did, they escaped the cordon.

Mr. Vorhaus: I believe all mail carried on these ships was examined by the British, but they allowed it to pass through their hands.

The Court: So I understand the witness meant to say.

The witness then continued to answer questions of the Court, as follows:

That continued to the Fall, perhaps, of 1916. There was a large volume of mail coming in during the years 1915 and 1916, the Deutschland brought over some mail, too. And then there were Germans coming in under assumed names, and by various devices, were taking it to Germany and coming back, and there was considerable mail came through Switzerland as well. This came over in French ships and was also subject to censorship in France.

The witness, then, in answer to questions by Mr. Quinn, resumed:

304 I do not think the French censorship was so rigorous as the English. By the Deutschland, I mean the submarine "Deutschland," which made two trips and brought mail and took back mail on both trips.

In regard to the wireless, at the outbreak of the war there was the Sayville station which was in operation. The Tuckerton, at that time, was not completed. The Sayville continued throughout the war to send messages. I think it was taken by the Postal Cable Company which is controlled by the Commercial. The Tuckerton was not finished, and if I am not mistaken, there was some trouble as to deciding who were the owners of the Tuckerton station and the United States Government finally took it over, and the Western Union Telegraph Company continued to use it. One company had one wireless and the other the other; the Commercial Cable had the Sayville, and the Western Union had the Tuckerton. Messages by wireless to and from Germany, in the years 1915 and 1916 and to my knowledge down to April 6, 1917, were dispatched over the wireless route in very large volume. At one time they were limited to twenty-five words to a message, but that was on account of the very large number of messages sent through the stations. There was, during that whole period once in a while a delay, that is, the cable companies would become clogged through the great number of mes-

sages that they had, and had to postpone for maybe two or three days at a time, until they could catch up. Communication continued over the wireless to April 6, 1917, the date of America's entry into the war. These messages were sent from this country and received in Germany and received by wireless from Germany in this country and telegraphic transfers were made by wireless during that time of large volumes of money in January, February and March, 1917 and some banks even transmitted and received money by cable
 305 and wireless transfers right down to the eve of the war, April 6, 1917.

In answer to questions by the Court, the witness stated:

I would not say that the mail went freely right up to the end of 1916. At the beginning of 1916, I would say there was quite a volume of it coming through. Of course, it petered down toward the last Gerard notes, which were in the end of 1916. Britain and France, as far as they could, stopped communication by mail from Germany to this country in 1915,—I do not know exactly when in 1915—so that it was merely surreptitious communication that went on. That situation which was changed in 1915, continued down to April 6, 1917, down to the outbreak of the war. There was no free communication excepting what was put through surreptitiously. With respect to the wireless service, subject to the congestion of the great number of messages, there was free communication between Sayville and Tuckerton and the other side until April 6th, 1917,—I do not say but what there may have been April 5th, but there was communication with Germans freely throughout March, 1917, subject to the congestion. The communication was subject to the United States Government censorship; that is, they could not send a wireless saying that the steamship Mauretania was leaving the Port of New York, for instance. Business communications could be sent, and the Government censors had to be satisfied that it related to business, and not to an act of war in preserving the United States' neutrality.

In answer to a question by Mr. Vorhaus, the witness stated:

306 All messages which were sent over the wireless were censored by the cable authorities during 1916 and 1917.

Cross-examination.

By Mr. Vorhaus:

The Witness (resuming): After the severance of diplomatic relations, the censorship did not become very rigorous in regard to business communications. The purpose of that censorship was to preserve the neutrality of the United States. I do not see that the fact that any person having a German name or being suspected of representing German interests made any difference in the messages going to Germany. German names would naturally be in the wireless. I would not say that messages of people with German names or who

were suspected of having German affiliations in Germany were more rigorously censored ever though they related to business, which I know of my own knowledge, because of my experience with the Bank of Commerce. We had other messages besides the transmission of money to and from Germany. If we had purchased cable transfers from other institutions and they had not been received we would send a wireless there about them. They were received. These messages had reference principally to the transmission of money and making inquiries in case there was any delay, and that was the extent of my own experience.

Mr. Vorhaus: I move to strike out his testimony, if your Honor please, with regard to that experience.

The Court: I will take it as it stands.

In answer to questions by the Court, the witness replied:
307 We transmitted during the months of February and March, 1917, wireless transfers to Germany the same as we did before.

There may have been a difference,—I cannot recall what the delays were during that period but as far as the censors went I found no change. I know nothing beyond the transmission of moneys and the dispatches relative to its delay or to its receipt, and so on. There may have been other messages, but none that I recall.

Redirect examination.

Of Mr. Quinn:

The Witness (resuming): As one of the foreign exchange experts of the Bank of Commerce, I had conferences at that time with other men in regard to the transmission of moneys to Germany and it was part of my business to know the cable facilities and the customs of the companies represented by the men attending these conferences.

I was familiar with the activities of the other companies in
308 sending and receiving messages by wireless between this country and Germany in the year 1916 and in January, February and March of 1917 by other financial institutions.

By Mr. Quinn:

Q. Now, is it not a fact that the number of messages increased in January, February and March, if possible, over what they were before.

Mr. Vorhaus: I object to that.

The Court: I will overrule the objection.

The Witness (resuming): They did increase. In some of the companies, of course, they had a situation which they wanted to clear out of and consequently messages did increase.

Recross-examination.

By Mr. Vorhaus:

The Witness (resuming): After the severance of diplomatic relations and when the war was imminent, the banks wanted to clear up all the business they did with German banks, the messages increased and the companies were accepting them.

The Court: As to your motion to strike out everything except his knowledge——

Mr. Vorhaus: Well, I do not press it.

The Court: If you do not press it, I will not rule on it.

Mr. Vorhaus: I think your Honor limited it on your examination, but just what probative force you will give it——

303 The Court: I really do not think he has any knowledge except as to the transmission of money.

Mr. Vorhaus: I assume your Honor will only give the evidence the probative value which it deserves, so I do not think it is necessary to press the motion.

The Court: At present, I do not see how I can give it any effect.

Mr. Quinn: Then I will have to call some other witnesses from the telegraph company, I wanted to shorten it and Mr. Barrand has testified that he knew of the experience of the other banks. If your Honor says that at present you do not care to give it any value, we will call a witness, but it will prolong the trial. We will call the men and give the number of messages, and so forth.

The Court: I cannot judge except from the proof here. I do not think this witness really knew anything more than the transmission of money.

Mr. Quinn: He has testified that he knew of the volume of the messages sent by banks, and that they were being sent.

I will ask Mr. Barrand.

Upon being questioned by Mr. Quinn, the witness stated:

From communications had with other banks, the general nature of the messages and wireless messages received and sent by persons in this country or institutions for the Bank of Commerce to and from Germany was generally understood.

310 Mr. Vorhaus: I object to the witness making a statement of what was understood.

The Court: Yes; if he knew it from what they told him I would not take it.

By Mr. Quinn:

Q. Do you know the general business practice at that time, prevailing at the time, in January, February and March, 1917, acquired in the course of dealings with other banks?

Mr. Vorhaus: I object to that as incompetent. This subject matter is not a matter of any custom. Evidently it is hearsay.

In answer to questions by Mr. Quinn, the witness then resumed:

It was just talking together with one another; what they said they could get through. I have communicated with, to refresh my memory on this thing, with both the Western Union and the Commercial Cable Company within the last two weeks. I did not just specially refer to financial wireless messages; they informed me that they were receiving all kinds of communications right up to that time.

The Court: Is there really an issue about this?

Mr. Vorhaus: If your Honor please, I do not see why this testimony is received. I do not know who told him or who the party is who told him.

By Mr. Quinn:

Q. Say who told you.

A. Mr. Messner.

311 The Court: Do you raise an issue on it?

Mr. Vorhaus: I certainly do.

The Court: Objection sustained. You will have to call the men.

Mr. Quinn: That will prolong the trial.

The Court: It is clearly hearsay evidence. I cannot let it in.

Whereupon, Mr. Quinn, as counsel for the defendants, then offered in evidence a letter dated February 5, 1918, which was conceded by the plaintiff to have come from the files of Heyn & Covington, and that it was signed by Hans E. Stoehr and was received by Mr. Heyn to whom it was addressed. It was marked defendant's Exhibit X.

KARL ZIMMERMAN, recalled, testified as follows:

Direct examination.

By Mr. Quinn:

I prepared from the books of the Botany Worsted Mills a statement of the votes cast at the stockholders' meetings, as shown by the minutes from March 15, 1910, to May 28, 1919 and this statement (examining same) is a correct statement from the books.

Whereupon, Mr. Quinn, as counsel for the defendants, offered it in evidence and it was received in evidence and marked Defendants' Exhibit Y.

The Witness (resuming): I acted as Judge of Elections at the Stockholders' meetings of the Botany but did not pass upon the

proxies submitted; I think the attorney for the company used to pass on all proxies.

312 By Mr. Quinn:

Q. When Hans E. Stoehr voted his proxy for Kammgarn-Spinnerei, he had a written proxy from Kammgarn-Spinnerei, had he not?

Mr. Vorhaus: I object on the ground that the proxy is the best evidence.

The Court: Yes, it is better.

The Witness (resuming): He must have had one. I was the Judge. When Hans E. Stoehr voted as proxy for Kammgarn Spinnerei for 14,910 shares that was a written proxy and I hunted for it.

By Mr. Quinn:

Q. And take the meeting of March 17, 1914, when Hans E. Stoehr voted as proxy again for Kammgarn-Spinnerei Stoehr & Company on 14,900 shares; he had a written proxy?

A. I will have to look those proxies up.

Mr. Vorhaus: I object to that, if your Honor please. It is clearly hearsay.

Objection overruled.

The Witness (resuming): I looked for the proxies, but I have not compared them; they were packed up in packages and the date on it, but I did not look at the different proxies.

Mr. Vorhaus: I move to strike out his testimony.

The Court: Do you want the proxies?

Mr. Vorhaus: I do.

313 The Court: You will have to bring them.

The Witness (resuming): I think I can go out to Passaic and get the proxies today; it depends how the trains are running there. Since the hearing Wednesday, I examined the office files of the Botany for correspondence between Kammgarnspinnerei of Leipzig and Botany from the year 1913 up to date, that is, to 1916, the last communication between the Kammgarn-Spinnerei of Leipzig and Botany and approximately 100 to 150 letters addressed to Botany Worsted Mills were received by the Botany in that time. They were signed Kammgarn-Spinnerei.

Mr. Vorhaus: I object to that as immaterial and incompetent. Objection overruled.

The Witness (resuming): They were signed Kammgarn-Spinnerei Stoehr & Company Aktiengesellschaft, and then were either signed by the two procurists or one procuristen and one managing director, or were signed by two managing directors. They were all addressed to the Botany Worsted Mills and the same is true of the

ten or a dozen letters which passed between Kammgarn Spinnerei and the Botany; relating to the dividends of stock.

Mr. Vorhaus: I object to that as incompetent.
Objection overruled.

By Mr. Vorhaus:

The Witness (resuming): According to defendants' Exhibit Y, at the annual meeting of March 16, 1915, Hans E. Stoehr as trustee voted 10,000 shares, that is 10,000 of that 14,900. It states therein that "Kammgarn-Spinnerei Aktiengesellschaft represented by
314 Georg Stoehr voted in person, 4,910 shares," which is correct.

That was on account of the twenty day rule that the stock had not been formerly transferred to Max. At the annual meeting of March 21, 1916, the 14,900 shares were voted in this way: 10,000 by Hans E. Stoehr as trustee, and 4,900 voted by Max W. Stoehr as trustee.

FERDINAND KUHN, a witness called in behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Quinn:

I am a citizen of the United States since the year 1908 and live in Passaic, New Jersey, with my family. I was connected with the Botany Worsted Mills since 1890, first as wool buyer until 1903 and then director of the mill from the year 1900 to date. In 1904 I became Treasurer and continued to act as such until March 15, 1915, when Hans E. Stoehr was elected Treasurer. I became Vice President in March, 1915 and on the death of Hans E. Stoehr in 1918, I became active again in directing the affairs of the Company and continued so until the new Board came in. On the resignation of Mr. Prehn, I was elected by the new Board as Vice President August 20, 1918. I am now President of the Company, being elected as such at the Directors' meeting of the present Board March 27, 1919. I was treasurer of the company in 1913 and 1914 and attended the stockholders' meetings.

By Mr. Quinn:

Q. What is your best recollection regarding a proxy from Kammgarn-Spinnerei Stoehr & Company?

315 Mr. Vorhaus: I object to that as incompetent and immaterial.

Objection overruled.

A. The proxies must have been there if Hans——

By the Court:

Q. You do not remember anything about it?

A. I do not remember; the votes were very carefully examined.

Mr. Vorhaus: I ask to strike that out.

By Mr. Quinn:

Q. In the course of his direct examination, page 45 of the stenographers' minutes, Mr. Max W. Stoehr testified that "It was the rule that when my father was over here he represented the firm, and when he was not here at the stockholders' meetings, then my brother represented the firm." Please state the facts in regard to that.

Mr. Vorhaus: I object to that question.
Objection overruled.

The Witness (resuming): When Eduard Stoehr was here he represented the firm and voted in person as a director, an active director of Kammgarn-Spinnerei Stoehr & Company. Hans E. Stoehr was not a director, he was a member; he was not an active director of Kammgarn-Spinnerei; he was not a director at all; I mean in what we call in the Kammgarn-Spinnerei is a director. There are two official directors.

By Mr. Quinn:

Q. He never was either?

Mr. Vorhaus: I object to that.

The Court: There is no contradiction. It is exactly what your client has said.

316 The Witness (resuming): He was a member of the Aufsichtsrat; that was all, as far as I know here.

Q. On pages 44 and 45 of the testimony of Mr. Max W. Stoehr, on direct examination he testified that the Kammgarnspinnerei negotiated certain sales to the Botany Worsted Mills through Hans E. Stoehr, and that where there was a sale to the Botany, "all its affairs were directed by Hans E. Stoehr," and that "Hans E. Stoehr acted for both." Will you state what the facts in that regard were to your own knowledge?

A. I think those transactions were directly from the Kammgarn-Spinnerei with the Botany Worsted Mills.

Mr. Vorhaus: I move to strike out the answer; he said he thinks they were.

By the Court:

Q. Do you know anything about it?

A. No; the transactions were between the Kammgarn-Spinnerei Stoehr & Company and Botany Worsted Mills.

The Witness (resuming): Those transactions in the years 1913 and 1914 up to March, 1915, were directly, were signed by the proper officers on both sides either from Leipzig or in Botany. I was the treasurer of the company in 1913 and 1914 and the chief executive of the company in that capacity and had charge of the transactions above referred to; I remember the sale of yarns. There was a great deal done in 1914 from January until the outbreak of the war in Europe; I think it was mostly yarns; there may have been a few goods. I had entire charge for the Botany Mills of those transactions; I was the treasurer responsible for it. It might be that certain letters were signed by somebody else at the mill of the Botany going to Kammgarn-Spinnerei, but they were signed by some officer of the Botany; as in the capacity of an officer of the Botany.

317 I am not sure about every letter, every transaction, it might have been done by some other officials.

By Mr. Quinn:

In the course of his direct examination, page 46 of the stenographer's minutes, Mr. Max W. Stochr testified relating to the transactions with Kammgarn-Stochr & Company as follows:

Q. "Your brother Hans wrote for the Botany Mills for the Kammgarn Spinnerei, and they answered him?"

A. Yes."

And on page 47 he was asked and answered thus:

"Q. You think the Botany Mills for the most part acted, if I may say so, as selling agent?"

A. Yes.

Q. What particular officer of Botany Worsted Mills conducted those negotiations?"

A. Hans Stochr."

Please state the facts of your own knowledge in regard to those transactions.

Mr. Vorhaus: I object to that.

Objection overruled.

The Witness: I think those yarn transactions in 1914, from January to the outbreak of the war in Europe, were greatly transacted by Mr. Hans E. Stochr in the capacity as an official of the Botany Worsted Company.

Mr. Vorhaus: I move to strike out the words "in the capacity of."
The Court: Strike it out.

By Mr. Quinn:

Q. Did the communications from Kammgarn-Spinnerei to Botany regarding those yarn transactions come from Kammgarn Spinnerei direct to the Botany.

A. Yes.

Mr. Vorhaus: I object to that. That is calling for a conclusion.

318 By the Court: If you want the correspondence you are entitled to have it. Is that what you want?

Mr. Vorhaus: No.

Objection overruled.

The Witness (resuming): They came from Kammgarn-Spinnerei and the answers that went from the Botany, went direct from the Botany to the Kammgarn-Spinnerei.

Same objection and ruling.

Mr. Quinn:

Q. In the course of his direct examination, referring to those yarn transactions, Mr. Max W. Stocher stated that in said transactions his brother Hans E. Stocher "acted for both"; is that the fact?

Mr. Vorhaus: I move to strike that out.

Motion denied.

The Witness (resuming): He acted for the Botany, as an official for the Botany. Georg Stocher was not in the United States in February, 1917.

By Mr. Quinn:

Q. Was any certificate received by the Botany Worsted Mills from either Eduard Stocher or Georg Stocher relating to the 14,000 shares in January, February or March, 1917?

Mr. Vorhaus: I object to that, if your Honor please.

Objection overruled.

The Witness (resuming): No, and Eduard and Georg Stocher were the only two directors of the Botany at that time in Germany.
319 I visited Germany during the years that I occupied the position of treasurer of Botany Worsted Mills; in the years 1905, 1906, 1908, 1910, 1912 and December, 1913 and January, 1914. And as the treasurer of Botany Worsted Mills I had official transactions with Kammgarn Spinnerei Stocher & Company and I visited the officials of that Company in Leipzig; its share capital was 12,000,000 marks. I was acquainted with Eduard Stocher, the father and Georg Stocher, the son and with George Kuntz. I have attended meetings of the Aufsichtsrat, the Advisory Board as an invited guest.

When asked by the Court "You do not know how the powers of the corporation were distributed, do you," the witness replied:

Not exactly how the powers were distributed, but I know the business was managed or conducted by two active managers or directors, and the Aufsichtsrat, corresponding to our Board of Directors.

220 Cross-examination.

By Mr. Vorhaus:

The Witness (resuming): Up to the outbreak of the European war there were very large dealings in yarns, that is, the Kammgarn-Spinnerei sent over a great many yarns, part of which were sold to the Botany Worsted Mills and another part disposed of to outsiders. The Botany Mill bought them from Leipzig and received them from there. Some of those yarns were disposed of to outsiders.

Q. And negotiations for those transactions were handled by Mr. Hans E. Stoeckl, those yarn transactions?

A. They were sold—

Q. They were handled personally by Mr. Stoeckl? I am not asking in what capacity, but Mr. Hans E. Stoeckl handled those transactions?

A. No. I think I handled those transactions. I did not go out as treasurer and sell the goods; our yarn representative sold them. The Botany bought those yarns from Stoeckl & Company.

In answer to a question by the Court, the witness stated:

I am not quite sure whether some transactions were direct from the Kammgarn-Spinnerei to a customer here, or whether they all were through Botany Mills. I was under the impression that they went all through Botany.

By Mr. Vorhaus:

Q. You know that a great many letters came from Kammgarn-Spinnerei to Hans personally?

Mr. Quinn: I object to that as incompetent, immaterial and irrelevant.

321 The Witness: That may be that he received direct letters from the Kammgarn-Spinnerei.

Mr. Quinn: I move to strike out the answer.

The Court: I will take it that he does not know.

The Witness (resuming): I only received the communications that came to the Botany Worsted Mills, or intended for the Botany Worsted Mills.

End of examination — Ferdinand Kuhn.

Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence two certain declarations of trust and a certain stock power executed by Max W. Stoeckl, each dated February 19, 1917, which were accepted over the objection of Mr. Vorhaus and marked Defendants' Exhibit Z.

Whereupon, Mr. Quinn, as counsel for the defendants, further

offered in evidence a copy of the By-laws of the Botany Worsted Mills adopted July 30, 1918, which was accepted by the Court over the objection of Mr. Vorhaus and marked Defendants' Exhibit A-1.

Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence from the minute books of Stoeck & Sons, Incorporated, the waiver by directors of notice of meetings of Stoeck & Sons and the minutes of the meeting of June 1, 1917, which was received in evidence and marked defendants' Exhibit B-1.

Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence from the minutes of the Board of Directors of Stoeck & Sons,

Incorporated, held March 28, 1919, the following two items:

Item No. 9. "Demand by Alien Property Custodian for rights, privileges and benefits of Kamagarn-Spinnerei, Stoeck & Company under the contract between it and Stoeck & Sons, Incorporated, dated February 20, 1917."

Also Item No. 10, entitled "Demand served upon the company by Alien Property Custodian on March 13, 1919."

The Court accepted pages 10, 11, 12, 13, and 14 over Mr. Vorhaus' objection, and they were marked Defendants' Exhibit C-1.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence a copy of a demand dated the 10th of February, 1919, by the Alien Property Custodian upon the Botany Worsted Mills, acknowledged by William J. Hellmer with an acknowledgment on the back of it of service, which was received in evidence and marked Defendants' Exhibit D-1.

A colloquy then ensued between Court and Counsel on both sides as to the right of plaintiff to challenge the validity of the demand which was offered in evidence and marked Exhibit D-1, and to file a supplemental bill, the Court stating that there would be no difficulty whatsoever in the matter.

Whereupon Mr. Quinn, as counsel for the defendants, offered in evidence copies of two demands by the Alien Property Custodian upon Stoeck & Sons, Incorporated, dated August 6, 1918, one entitled "Report No. 4,845," in respect of the stockholdings of Eduard Stoeck, and the other, No. 4,845, in respect of the stockholdings of George Stoeck in Stoeck & Sons, Incorporated, which are produced from the files of Stoeck & Sons, Incorporated. These were received in evidence and marked Defendants' Exhibit E-1 and F-1.

323 Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence a certain demand by the Alien Property Custodian, dated March 6, 1918, addressed to Max W. Stoeck, in respect of the properties therein referred to of Eduard Stoeck, said demand being 1,264, which was received in evidence and marked Defendants' Exhibit G-1, and a demand by the Alien Property Custodian, dated March 4, 1918, addressed to Max W. Stoeck, in respect to the property of Georg Stoeck, also produced from the files of Stoeck & Sons, Incorporated, which was received in evidence and marked Defendants' Exhibit H-1.

It was thereupon stipulated by both sides that the above demands—the two demands which have been offered in evidence made upon the Botany Worsted Mills, and the two demands made upon Max W. Stocher that have just been offered in evidence—were properly served upon the persons to whom they are directed.

Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence from the files of Stocher & Sons, Incorporated, the demand by Francis P. Garvan, Alien Property Custodian, dated March 5, 1919, addressed to Stocher & Sons, Incorporated, and also to Max W. Stocher as trustee and individually, in respect to the stock of Eduard Stocher and George Stocher in Stocher & Sons, Incorporated, together with the annexed affidavit by Paul Kieffer, sworn to March 28, 1919, of the service thereof upon Max W. Stocher as trustee and individually, with the same stipulation as aforementioned, which was marked Defendants' Exhibit I-1.

Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence a demand by the Alien Property Custodian of the United States, by Francis P. Garvan, dated March 10, 1919, produced from the files of Stocher & Sons, Incorporated, addressed to Mr. Max W. Stocher as voting trustee and as trustee and individually, this copy having been served upon Stocher & Sons, Incorporated, together with the affidavit of Paul Kieffer, sworn to March 28, 1919, of the service of the same upon Max W. Stocher as voting trustee and as trustee and individually, which was marked Defendants' Exhibit J-1, with the same stipulation.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence a certain demand by Francis P. Garvan, Alien Property Custodian, dated March 10, 1919 and addressed to Max W. Stocher and Lotte Stocher, executrix of the estate of Hans F. Stocher, in respect of the partnership interests in the firm of Stocher & Sons, of Eduard Stocher and Georg Stocher, Eduard 42-36ths and George 5-56th, which was marked Defendants' Exhibit K-1.

Whereupon, Mr. Quinn, as counsel for the defendants, further offered in evidence a certain demand by A. Mitchell Palmer, as Alien Property Custodian dated February 6, 1918, and addressed to Stocher & Sons, Incorporated in respect of the interests of the Kamnagarn-Spinnerei & Company, as set forth in said demand, together with Exhibit A annexed thereto, which is a copy of the contract of February 20, 1917, which was marked Defendants' Exhibit L-1.

LOUIS HESSE, a witness called in behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Quinn:

I am a public accountant by profession and have been so for upwards of twenty years. I am married and reside at Elizabeth, New Jersey. I was elected treasurer of Stocher & Sons, Incorporated, April 30, 1918, and gave the bond and qualified and have acted since and am now treasurer of said company.

325 Whereupon, Mr. Quinn, as counsel for the defendants, offered in evidence a statement prepared by Mr. Hesse from the books of the Company of Stoehr & Sons, Incorporated, of the stockholders meetings and the elections and resignations of directors from January 4, 1918, down to date, which was received in evidence and marked Defendants' Exhibit M-1.

The Witness (resuming): I prepared this from the Minute Book. I have charge of the books and records, the financial books and records of securities of Stoehr & Sons, and the correspondence relating to it and I prepared the annual statements of the company and the monthly statements of the operations of the company, the tax reports, State and Federal, and the statement of the current assets and liabilities in column form as of these periods, referring to plaintiff's Exhibit 13, from the books of the Company. In the statement, plaintiff's Exhibit 13, certain items have been entered as "doubtful", and so forth; I prepared a statement by dates, the dates corresponding to the seven columns, of the facts upon which such securities were entered as doubtful and those refer to the seven dates at the top of the seven columns, and that was prepared from the books of the company. There is nothing in the records of Stoehr & Sons, Incorporated, purporting to be a certificate representing 14,900 shares of stock of the Botany Worsted Mills.

By Mr. Quinn:

Q. Is there anything in the files of Stoehr & Sons, Incorporated, purporting to be a communication to Kammgarn Spinnerei Stoehr & Company in regard to 14,900 shares of stock of the Botany Worsted Mills?

326 Mr. Vorhaus: I object to that as incompetent.

Objection overruled.

The Witness (resuming): I have searched the files of the corporation of Stoehr & Sons, Incorporated, and I fail to find any such communication.

By Mr. Quinn: Is there in the files of Stoehr & Sons, Incorporated, any communication from Kammgarn-Spinnerei Stoehr & Company in either January, or February or March, of 1917, to the Company?

Same objection, ruling and exception.

The Witness (resuming): No. As far as I know when Stoehr & Company, Incorporated, took over the assets of Stoehr & Sons, the partnership, it took over the records of the partnership and the books and records of the partnership have been in my possession since that time; those that are not are in Mr. Quinn's office under receipt to me as treasurer. I have searched the records of the partnership of Stoehr & Sons for any communication to either Eduard Stoehr or George Stoehr regarding the assets of the partnership, Stoehr & Sons, or of the transfer to Stoehr & Sons, Incorporated, but have found no such communication or notice. I have searched the

records of Stoehr & Sons, Incorporated or of Stoehr & Sons, the partnership, but have failed to find any letter or wireless message from the partnership to Eduard and George Stoehr, or either of them, or from Mr. Hans E. Stoehr, or Max W. Stoehr to either Eduard or Georg Stoehr, nor any such communication from Stoehr & Sons,

327 Incorporated, or any officer of Stoehr & Sons, Incorporated, to Eduard or Georg Stoehr; nor any request or demand made by Mr. Max W. Stoehr or any one on his behalf upon Stoehr & Sons, Incorporated, or any of its officers and directors, to take any action respecting the 14,900 shares of stock of the Botany Worsted Mills prior to the commencement of this suit on or about December 2, 1918.

Mr. Vorhaus: I object to that. We allege affirmatively in our complaint we did not make a demand because the directors were Mr. Palmer's nominees.

Mr. Quinn: I think Mr. Vorhaus is mistaken. They do not allege affirmatively.

Objection overruled.

The Witness (resuming): I have searched the files of Stoehr & Sons, Incorporated for any communication from Kammgarn Spinnerei regarding a contract of February 20, 1917 but have found no such communication from Kammgarn-Spinnerei to Stoehr & Sons, Incorporated or to any of its officers; the same thing applies to the partnership, the partnership records of Stoehr & Sons; I have searched the record also. I attended all of the meetings of the Board of Directors of Stoehr & Sons, excepting one. I was present at all meetings before Mr. Max Stoehr's resignation was accepted. During the time that Mr. Max W. Stoehr was a director of Stoehr & Sons he made no statement to my recollection to the Board as to a contract of February 20, 1917, nor did he make any communication to the Board about it by letter or otherwise, as far as I know.

328 By Mr. Quinn:

Q. Did he ever claim the shares referred to in a certain contract of February 20, 1917, being 14,900 shares of Botany Worsted Mills?

Mr. Vorhaus: I object to that.

Objection overruled.

Q. Did Mr. Max W. Stoehr ever bring up or make any statement or suggestion regarding paying anything under the contract of February 20, 1917?

Mr. Vorhaus: I object to that, because the minutes of February 20 show the contract was made.

Mr. Quinn: I am talking about the period when Mr. Heese was in.

Mr. Vorhaus: When did he come in?

The Witness: April 30, 1918.

Q. Was that contract mentioned in any of the directors' meetings until Mr. Stoehr went out?

A. Yes, it was referred to in one meeting, on August 30, 1918.

The Witness (continuing): The minutes state I presented the report of Perley, Morse & Company, who were the accountants who were making an examination of the books of Stoehr & Sons, in order to ascertain its financial condition. At that meeting I presented the report of Perley, Morse & Company, and I pointed out to Mr. Wallace the item of \$5,000 on the balance sheet, which was marked, "Investment 14,900 shares, Botany Worsted Mills Stock", and Mr. Wallace then asked Mr. Quinn some questions in regard to that contract.

By Mr. Quinn:

Q. What was said, what also?

Mr. Vorhaus: We object to what Mr. Quinn and Mr. Wallace said.

Mr. Quinn: Mr. Wallace was president of the Company and Chairman of the Board.

The Witness: Mr. Wallace was inquiring about this contract and the item of \$5,000.

Mr. Vorhaus: Does your Honor allow the conversation between Mr. Quinn and Mr. Wallace if Max Stoehr was not present?

329 Q. Was Mr. Max Stoehr present?

A. He was.

The Court: I will allow it.

The Witness (resuming): Mr. Quinn went into an explanation of the object of the Trading with the Enemy Act and explained to the Board; the Board were all present—explained to the Board that this contract was a palpable attempt on the part of Stoehr & Sons, Incorporated, to lodge the ownership of these 14,900 shares of stock under an American corporation under a contract which could not be carried out, and which would not hold water, and then Mr. Quinn said to Mr. Wallace that he would make a formal report on that subject at the next meeting of the Board and Mr. Quinn did report at the following meeting.

Mr. Vorhaus: I move to strike out all that testimony; after all it is merely an opinion of Mr. Quinn. I do not see that it has an evidential value at all.

The Court: Yes, it has, if Max was there; if he was a party to the contract, any action he might have taken on it, or his inaction.

In answer to questions by the Court, the witness stated:

Mr. Stoehr was present but did not say anything to my recollection.

The Court: I will deny the motion.

Mr. Quinn: I offer in evidence the following extract from the minutes of an adjourned regular meeting of the directors of
330 Stoehr & Sons, Incorporated, held Wednesday, October 16, 1918:

"Present: James N. Wallace, Francis P. Garvan, Andrew B. Duvall."

"Absent: Max W. Stoehr."

Item No. 12 is the following:

"Botany Worsted Mills stock purchased in Leipzig.

"Mr. Quinn reported that an alleged——"

Mr. Vorhaus: I object to that.

Objection overruled.

Mr. Quinn: "Mr. Quinn reported that an alleged agreement was entered into between Stoehr & Sons, Incorporated, and Stoehr & Company of Leipzig, for the purchase by the New York Company of 14,900 shares of Botany Worsted Mills Stock held by Stoehr & Company, of Leipzig."

The Witness (resuming): I remember the report by counsel to the directors of that meeting of October 16, 1918.

By Mr. Quinn:

Q. Please state the purport of it.

Mr. Vorhaus: I object to that; if the report is here it should be produced.

The Court: Was there a written report?

Mr. Quinn: No, it was not a written report.

The Witness (resuming): The substance of the report was practically confirming the opinion that Mr. Quinn gave the directors at the previous meeting of August 30, 1918, to the effect that the contract was entered into for the purpose of lodging this stock, which was foreign owned, and the certificates were not even in this country, in an American corporation for the purpose of beating the Alien Enemy Act. That was the substance of the report. Another
331 ground was that the company was not in a position financially to carry out the terms of the agreement. I do not recall any other grounds at the moment.

By Mr. Quinn:

Q. Do you recall anything being said about the parties never intending to do what the contract upon its face purported to do?

Mr. Vorhaus: We object to that.

Q. And all the circumstances which counsel explained?

Mr. Marshall: The minutes show anything on that subject; they are apparently complete.

Mr. Quinn: This reads,

The Court: Of course, that is not conclusive, whatever opinion into between Stoehr & Sons, Incorporated, and Stoehr & Company, of Leipzig, for the purchase by the New York Company of 14,900 shares of Botany Worsted Mills stock held by Stoehr & Company of Leipzig."

The Court: Of course, that is not conclusive, whatever opinion he gave them.

Mr. Vorhaus: It does not show any action was taken, if your Honor please.

The Court: Perhaps not. Inaction may be enough. I will take what they heard from their counsel, any opinion they acted on.

The Witness (resuming): I have already stated what Mr. Quinn said as far as I can recall. I remember distinctly Mr. Quinn saying that the contract, explaining the acts that were done, the different things that were purported to be done, and all the circumstances of it, and stating that he had come to the conclusion, and so advised the Board, that that did not represent the real intention of the parties.

332 By Mr. Quinn:

Q. And finally, do you remember whether Mr. Quinn advised the Board of Directors at that meeting, that if there ever was a contract of that kind it was abrogated, and made null and void on the opening of the war?

Mr. Marshall: I object to that; it is a statement of counsel?

The Court: It was somewhat leading, but he has exhausted the witness' memory before. I think you could have put it in a little less leading way than that.

In answer to questions by the Court, the witness stated:

I remember him saying that the contract did not represent the true intent of the parties, but that is not suggestive of anything more to me, excepting that he brought out the fact that the company was not in a financial condition to carry out the terms of the contract.

The Witness (resuming): I have searched the files of Stoehr & Sons, Incorporated, and I failed to find any letters or correspondence relating to the issuing of certain debentures of Stoehr & Sons, Incorporated, for credit balances.

Mr. Quinn: I now read in evidence the fact that the following debentures were issued for the following amounts:

Debentures were issued according to the books of Stoehr & Sons,

Incorporated, for credit balances to the following persons and in the following amounts:

"Kammgarn-Spinnerei Stoechr & Company.....	775,000
Eduard Stoechr.....	152,000
Georg Stoechr.....	24,000

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Max W. Stoechr.....	2,000
Hans E. Stoechr.....	47,000
	<hr/>
	\$1,000,000

The Witness (resuming): I have not been able to find any correspondence or any record in the books of Stoechr & Sons, Inc. showing any notice to or from either Kammgarn-Spinnerei Stoechr & Co. or Eduard or George Stoechr, regarding the issuance of those debentures or the credit balances.

By Mr. Quinn:

Q. Were the \$775,000 debentures ever delivered to Kammgarn-Spinnerei & Company?

Mr. Vorhaus: I object to that; there could not be. The law prevented it.

The Court: It will not do any harm.

The Witness (resuming): No; they were never delivered. They were subsequently seized by the Alien Property Custodian and turned over to the Guaranty Trust Company, as depository, and the \$152,000 debentures of Eduard Stoechr were found over in a safe deposit box in Passaic, but the same thing is true of them, and the same thing is true regarding the \$24,000 debentures of George Stoechr.

By Mr. Bradley:

The Witness (resuming): Let me explain that the books show 6,090 shares. There are 400 shares of the Botany stock that have never been located up to the present time. They are supposed to be in Germany, and the understanding is that those 400 shares are part of 1,200 shares that were purchased by three different individuals—I do not know the details of that transaction, because it all took place before I came into the company. 6,090
334 shares altogether are carried on its books at \$975,857.00 for the two. The certificates are about \$160 a share.

By Mr. Vorhaus:

The Witness (resuming): That was at the date the books were opened. The books were actually opened on March 1, 1917, but

some of these entries are dated in the journal as of February 20, 1917, the date when this original contract was signed.

By Mr. Bradley:

The Witness (resuming): There were not in the possession of Stoehr & Sons, Incorporated, certificates for more than 1,290 shares; that was the total.

Mr. Vorhaus: May we get a concession from the other side with regard to any official action that was ever taken by the Board so far as the minutes show, rescinding the contract?

The Court: Did the Board ever take any official action?

Mr. Quinn: No official action.

The Court: Yes, that may be entered.

(No cross-examination.)

ISAAC SMITH, a witness called in behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Quinn:

I am connected with the Postal Telegraph Company and was so connected during the war as Superintendent of tariffs. I
335 have come here under a blanket subpoena. I do not know what I am to testify to. My company used the wireless station at Sayville. In the months of November and December of 1916, and January, February and March of 1917 messages were accepted at our office in the United States, transferred to the Atlantic Communication Company, Sayville, and then transferred by wireless to Nauen, Germany.

In answer to questions by the Court, the witness stated:

I cannot say unless I could compare dates whether that was only until the outbreak of war but I think it was just prior to the war. I remember the war broke out on April 6th. I would not like to say until April 1st; it would all be a matter of memory.

By Mr. Quinn:

The Witness (resuming): It is my best recollection that messages were received right up to the eve of the war and sent from this country to Germany by wireless, and received from Germany in this country by wireless right up to the outbreak of the war; those were commercial messages. We took all kinds of messages. There was no difference, as far as I know, between financial messages and messages of other kinds, so far as their being received and sent. In regard to code messages, I presume they were in the same class with the other messages, to the best of my knowledge. You see, a

great many things have happened to telegraph and cable companies during the war. There was no discrimination because the name of the person sending was a German, nor was *their* any discrimination because it was going to Germany and was signed by a German here.

336 Cross-examination.

By Mr. Vorhaus:

The Witness (resuming): A great many of those messages were subject to the censorship by the United States Government. I do not know what class of messages were permitted and what class were not. The censor representing the United States Government may have refused to pass code messages, but I do not know. I have no knowledge of any individuals who sent messages in February and March of 1917, to Germany, that were passed by the censor, outside of wireless messages sent by well-known banks throughout the country.

Redirect examination.

By Mr. Quinn:

The Witness (resuming): For some months prior to the entry of the United States into the war, April 6, 1917, there were some messages that were sent and were required by the Government officials to be sent in plain English and not in code.

It was then stipulated by counsel for both sides that the other companies would testify to the same general effect as above and that other witnesses from the Western Union, operating the Tuckerton Wireless Station, would testify to the same general effect.

WILLIAM J. HELLMER, a witness called in behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Quinn:

The 14,900 shares of stock of the Botany Worsted Mills were on April 22, 1918, transferred into the name of the People's Bank & Trust Company as a depository and the entry is as follows:

337 "Transferred to People's Bank & Trust Company as depository for Alien Property Custodian, Passaic, New Jersey, April 22, 1918.

(Signed)

W. J. HELLMER,

Assistant Treasurer."

There was a subsequent transfer of that stock. The stock ledger of the Botany Worsted Mills shows that on February 25, 1919, 14,900 shares of stock of the Botany Worsted Mills was transferred

into the name of the Alien Property Custodian, and the total is by one certificate, said certificate being No. 81, and dated February 25, 1919; that was done after and pursuant to the demand of the Alien Property Custodian on the Botany Worsted Mills, dated February 11, 1919.

In answer to a question by the Court, the witness stated:

At that time we had begun to keep the transfers in the American way.

Mr. Vorhaus: We have not objected to any of this testimony on the assumption that we do not lose our right to question its validity at the end.

The Court: Oh, no; that is the issue in the case.

The Witness (resuming): I have been assistant treasurer of the Botany Worsted Mills since April 2, 1918 and Secretary of the Botany Worsted Mills since November 1, 1918, and a member of the Board of Directors since November 1, 1918. I was not in the employ of the Company prior to April 2, 1918. I am an accountant by profession and was elected assistant treasurer and secretary following the reorganization of the Board in March, 1918. Max W. 338 Stochr made no demand or request to my knowledge upon the Botany Worsted Company or any of its officers since the time I have been secretary and treasurer of the company for any specific act or anything regarding the management of the company.

Mr. Vorhaus: I object to that as immaterial. We did not give any testimony that he had made any demand.

Objection overruled.

(No cross-examination.)

JUSTUS SHEFFIELD, a witness called in behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Quinn:

I am an attorney and counsellor at law and a member of the New York Bar. I was formerly associated with Mr. Quinn in the practice of law at 31 Nassau Street and since July, 1918, have been in practice at 31 Nassau Street for myself. I was elected secretary of Stochr & Sons, Incorporated at the directors' meeting of October 16, 1918 and have discharged the duties of secretary of said company from that time to now and am now secretary of the company and in charge of the minute books of the company and the correspondence of the company.

Mr. Quinn: I offer in evidence, if your Honor please, the following from the minutes of the meeting of the Board of Directors of Stochr & Sons held November 12, 1918:

"Present: Messrs. James N. Wallace, Andrew B. Duvall, and Paul Kieffer, constituting a quorum of the Board."

The part I offer is marked No. 2, and is entitled:

339 "Sale of 1,290 shares of stock of the Botany Worsted Mills held by the Company."

That is on pages 2, 3 and 4 of the minutes.

Mr. Vorhaus: I object to that as incompetent and immaterial.

Objection overruled.

Marked Defendants' Exhibit N-1.

The Witness (resuming): I have examined the letter files and records of Stoechr & Sons, the partnership, that were in the possession and among the assets of Stoechr & Sons, Incorporated with reference to any particular communication from either Edward or Georg Stoechr to either Hans E. Stoechr or Max W. Stoechr regarding the transfer of the partnership assets of Stoechr & Sons to Stoechr & Sons, Incorporated.

By Mr. Quinn:

Q. Have you found any record of any such communication?

Mr. Vorhaus: If your Honor please, it seems to me he has already proved that by one witness.

Objection overruled.

The Witness (resuming): No, nor did I find in the papers of Stoechr & Sons, Incorporated any record of any communication by Stoechr & Sons, Incorporated to Kammgarn-Spinnerei of a contract of February 20, 1917; either by letter or wireless or any record of any such communication, either in the month of November or December, of 1916, or January, or February or March, 1917; nor any request or demand made by or on behalf of Max W. Stoechr, upon Stoechr & Sons, Incorporated, or its Board of Directors or officers to take any actions respecting the 14,900 shares of stock down
339½ to the time this suit was begun, so far as I have any knowledge or information; nor any communication received by Stoechr & Sons, Incorporated, from Kammgarn-Spinnerei Stoechr & Company, regarding a contract of February 20, 1917, as far as the records show or so far as I have any knowledge or information; that includes any notice or writing or request by wireless regarding the payment of any installment of stock purchased and no notice of any kind under said contract or relating to said contract of February 20, 1917.

By Mr. Quinn:

Q. Did the Alien Property Custodian dictate or attempt to dictate to the Board of Directors of Stoechr & Sons regarding the affairs of Stoechr & Sons?

Mr. Vorhaus: I object to that.
Objection sustained.

Q. Did the Alien Property Custodian make any communication to the Board of Directors of Stoehr & Sons, or to its officers regarding the contract of February 20, 1917?

Mr. Vorhaus: I object to that.
Objection sustained.

Q. The action of the Board in respect to the contract of February 20, 1917, was taken upon the advice of counsel and was based upon that advice, was it not.

Mr. Vorhaus: There was no action taken.

Q. The decision of the Board of Directors regarding the contract of February 20, 1917, was taken, was it not, upon the advice
340 of counsel and based solely upon that advice?

Mr. Vorhaus: The record is there was no action taken; I object to that.
Objection sustained.

(No cross-examination.)

It was stipulated between counsel for both sides that Heyn & Covington were counsel not only for Stoehr & Sons, Incorporated but for the Botany Worsted Mills.

Mr. Quinn, as counsel for the defendants, then offered in evidence a copy of the license by the War Trade Board, dated July 14, 1919, to the world at large, regarding trade communication with the enemy; a similar one relating to dyes and dye-stuffs of July 20, 1919 and a general license permitting certain communications and dealings with respect to enemy property, July 20, 1919. The three were then received in evidence and marked Defendants' Exhibit C-1.

Mr. Bradley, as counsel for the defendants, then offered in evidence photostat copies of the reports made by the Botany Worsted Mills and by Max and Hans Stoehr to the Alien Property Custodian. There were three of them and they were received in evidence and marked Defendants' Exhibits P-1, Q-1 and R-1.

Mr. Bradley: I offer printed copies of various executive orders, which I will identify.

One of October 12, 1917, which among other things, delegates to the Alien Property Custodian the powers conferred upon the President by Section 7 and various subdivisions of the Act.

341 Executive order of February 5, found on page 36 of this pamphlet, elaborating on the same order and some details.

Then executive order beginning on page 37 of the same pamphlet, dated February 26, 1918, conferring, among other things, upon the Alien Property Custodian, the power to affirm or disaffirm any incomplete transaction on the part and on behalf of the enemy.

Another executive order found on page 54 of this same pamphlet,

and dated July 16, 1918, delegating power respecting the sale of property.

Marked Defendants' Exhibit S-1.

Referring to the advertising of property for sale, counsel for plaintiff have agreed to stipulate in order to avoid expanding the record, that of the 25,700 shares mentioned as the shares to be sold, 14,900 were the shares covered by the contract of February 20, 1917, 1,290 were the shares theretofore belonging to Stoeck & Sons, Incorporated, and 9,510 were miscellaneous enemy owned shares. That is merely for the purposes of identification.

Also, said 9,510 were within other demands of the Alien Property Custodian.

Mr. Quinn: I offer a proxy dated March 2, 1914, by Kammgarn-Spinnerei, Stoeck & Company, to Hans E. Stoeck, authorizing him to vote the stock of Kammgarn-Spinnerei Stoeck & Company at the annual meeting of March, and state on the record that the two signatures, Mr. Zimmerman tells me, are Dr. Kuntz's, who was one of the two directors, and Mr. Hartz, who was one of the procuristen at that time, this being the proxy that Hans E. Stoeck used at the meeting of March, 1914.

Marked Defendants' Exhibit T-1.

Mr. Quinn: May it be understood that if I find them, that I may have the right to offer other similar proxies?

The Court: Yes; if you find any other relevant proxies they may go in.

Mr. Marshall: Submit them to us, and I think we will be able to make a stipulation.

Defendants' proofs closed.

Rebuttal.

MAX W. STOEHR, a witness recalled in rebuttal, testified as follows:

Direct examination.

By Mr. Vorhaus:

I heard the testimony of Mr. Hesse, who says that there was a meeting held after the Board of Directors of Stoeck & Company was reorganized, as a result of the nominations made by the Alien Property Custodian.

Mr. Vorhaus:

Q. That at that same meeting Mr. Quinn stated or expressed an opinion about the illegality of this contract of February 20, 1917, regarding the 14,900 shares, and that you were present at that meeting, and that you said nothing and made no protest. Will you please explain your silence at that meeting?

Mr. Bradley: I object to that.

Objection overruled.

The Witness (resuming): At first I may say that I do
343 not recall such a remark by Mr. Quinn, and I have been looking over the record.

By the Court: If you do not remember it you cannot give any reason why you were silent.

A. If I would.

Q. Did you hear it?

A. Yes. There were very many things said by Mr. Quinn at the time in regard to the old ownership, and I did not oppose any of those statements, for I knew that Mr. Quinn had my signed resignations in his hands, and if I would have made any statement contrary to Mr. Quinn, it would only have resulted in an acceptance of my resignation.

Mr. Quinn: I move to strike that out as not responsive.

Motion denied.

The Witness: I was very anxious to remain on that Board, for I had an interest in that company. I did not want to do or say anything to antagonize Mr. Quinn; I was there by his grace; he had my signed blank resignation in both companies.

LOUIS MARSHALL, a witness called in behalf of the plaintiff in rebuttal, being duly sworn, testifies as follows:

Direct examination.

By Mr. Vorhaus:

I heard the testimony that Mr. A. Mitchell Palmer gave here this morning in regard to an interview that I had with him this morning. My recollection of that interview accords with the statement made by Mr. Palmer in many respects, but as to one I am quite sure he is mistaken. I was retained by Mr. Vorhaus on behalf of Max W. Stocher in connection with a suit which was under consideration against the Alien Property Custodian with respect to an attempt or a desire to enjoin the sale of the shares of stock of the Botany Worsted Mills, which were, as I was informed, owned by Stocher & Sons, Incorporated.

I had occasion to go to Washington on other matters, and
344 it was suggested that while in Washington I should confer with the Alien Property Custodian with a view of arguing with him in favor of the discontinuance of the efforts to sell these shares of stock. I called at the office of the Alien Property Custodian and had a conversation with Mr. Palmer. I told him that I had been consulted.

I told him that I had been consulted with regard to the matter and our desire was to prevent a sale of these shares of stock. This

was, as I recollect it, subsequent to the proclamation of the armistice and it was before we had prepared any bill of complaint in the case. We had not as yet fully determined as to the course of action to be pursued. I had not personally met Mr. Max W. Stoechr; I had only met counsel. I said that it seemed to me there was no occasion for the sale of these shares; that the shares had been seized by the Alien Property Custodian and that he had named the directors of the corporation; that the business of the corporation would be carried on by these directors; that there was no desire to change the status, and that therefore, nothing could be gained by the sale of these shares of stock. That if the shares of stock were sold at that time, there would be few, if any bidders, unless it were that some of the competitors of the Botany Worsted Mills would form a syndicate for the purpose of buying these shares of stock and thus getting control of the corporation. That the consequence would

345 necessarily be that these valuable shares would be sacrificed, and that there was no reason why that should be done. He indicated that it was his purpose to sell these shares of stock, and I then said that if it was insisted upon carrying out this sale, that we would then feel constrained to bring suit to enjoin the sale, and in that connection I took the position that in so far as it would be undertaken to sell these shares of stock, that we would raise the question of the constitutionality of certain phases of the Trading with the Enemy Act as applicable to such proposed sales.

Mr. Palmer then asked me whether I thought that any American lawyer would have the nerve of raising the question of the constitutionality of that law, to which I replied that I had the nerve to do so in view of the opinions which I entertained.

So far as referring to the mere request for a postponement of the sale, I am sure that Mr. Palmer is mistaken. He was also mistaken in his recollection that I asked him for a postponement because Max was organizing a syndicate that wanted to bid on it. I did not ask for any such postponement. I referred to no such syndicate, and I asked for the absolute discontinuance of the proceedings with regard to the sale, my request being that matters should remain in status quo, and that there was no occasion for any sale. The connection in which a syndicate was spoken of was the suggestion that I had made, that I believed there might be a syndicate of competitors who might aid in this property, and that I knew of nobody else who could or would at this time be able to bid upon these shares of stock, which ran into a very large sum of money, and that the result of such a situation would be the sacrifice of these shares of stock their sale at a price far below their real value. I knew of no such syndicate.

346 I had heard of no such syndicate, and as I have already said,

I had never met Mr. Max W. Stoechr, had no talk with him upon the subject. My conversation before I went to Washington was confined to my interview with Mr. Vorhaus.

(No cross examination.)

The Court: Is that the case?

All Counsel: Yes.

The following documents were offered in evidence and identified in the foregoing minutes as Exhibits in the case.

346½ The following are the plaintiff's exhibits:

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PLAINTIFF'S EXHIBIT 1.

Certificate of Incorporation of Stoehr & Sons, Inc.

We, the undersigned, all being persons of full age, and at least two-thirds being citizens of the United States, and at least one of us a resident of the State of New York, desiring to form a stock corporation pursuant to the provisions of the Business Corporations Law of the State of New York, do hereby make, sign, acknowledge and file this certificate for that purpose as follows:

First. The name of the proposed corporation is "Stoehr & Sons Inc."

Second. The purposes for which the corporation is formed are as follows:

To import, export, buy, sell, manufacture and deal in textiles and textile products, cloths and all articles of textile manufacture and all raw materials entering into textiles, and generally to buy, sell and deal in all kinds of goods, wares and merchandise which may be acquired for any of the purposes of the Company's business and which may be profitably used or dealt in in connection with such business;

To apply for, patent, register, purchase, own, sell, assign or otherwise dispose of any trade marks, trade names and patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States or other countries, and to use, develop or grant licenses in respect of any such trade marks, patents, processes or inventions;

To acquire and own the good will, rights and assets of any person, firm, association or corporation engaged in a similar line of business and which this corporation is authorized to carry on, and to pay for the same in cash or in the stock or bonds of the Company, and to sell or in any manner dispose of the whole or any part of the assets so purchased;

To purchase, acquire, hold and dispose of the stocks, bonds or other obligations of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stocks, bonds or other obligations; to possess and exercise in respect thereof, all the rights, powers and privileges of individual owners or holders thereof and to exercise any and all voting power thereon;

To conduct and transact business in any of the states, territories, colonies or dependencies of the United States, in the District of Columbia and in any and all foreign countries; to have one or more offices therein and therein to hold, purchase, mortgage and convey real and personal property without limitation as to amount but always subject to the local laws.

349 Third. The amount of the capital stock is Two hundred and fifty thousand dollars (\$250,000), all of the same being common stock.

Fourth. The number of shares of which the capital stock shall consist is Twenty-five hundred (2,500) of the par value of one hundred dollars (\$100) each, and the amount of capital with which the corporation shall begin business is Two hundred and fifty thousand dollars (\$250,000).

Fifth. The principal office of the corporation is to be located in the Borough of Manhattan, City of New York.

Sixth. Its duration is to be perpetual.

Seventh. The number of its directors is to be four, and it is hereby provided pursuant to law that directors are not required to be stockholders.

The Board of Directors may hold their meetings and have an office or offices outside of the State of New York.

Eighth. The names and Post-office addresses of the directors for the first year are as follows:

Names.	Post-office addresses.
Hans E. Stoehr.....	200 Fifth Avenue, Borough of Manhattan, City of New York.
Max W. Stoehr.....	200 Fifth Avenue, Borough of Manhattan, City of New York.
Alfred de Liagre.....	200 Fifth Avenue, Borough of Manhattan, City of New York.
Georg G. Röhlig.....	200 Fifth Avenue, Borough of Manhattan, City of New York.

350 Ninth. The names and post-office addresses of the subscribers to this certificate and a statement of the number of shares of stock which each agrees to take in the corporation are as follows:

Names.	Post-office addresses.	No. of shares.
Max W. Stoehr....	200 Fifth Avenue, Borough of Manhattan, City of New York	8
Georg G. Röhlig....	200 Fifth Avenue, Borough of Manhattan, City of New York	1
Alfred de Liagre....	200 Fifth Avenue, Borough of Manhattan, City of New York	1
		<hr/> 10

In witness whereof, we have made, signed, acknowledged and filed this certificate in duplicate this 15th day of February, 1917.

MAX W. STOEHR.
GEORG G. RÖHLIG.
ALFRED DE LIAGRE.

In the presence of:
GEO. E. MOESEL.

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of February, 1917, before me personally came Max W. Stoehr, Georg G. Röhlig and Alfred de Liagre to me personally known to be the persons described in and who made and signed the foregoing certificate and they severally duly acknowledged to me that they had made, signed and executed
351 the same for the uses and purposes therein set forth.

GEO. E. MOESEL,
Notary Public.

Kings Co. No. 297.
Kings Co. Reg. No. 7167.
Certificate filed in New York Co.
N. Y. Co. No. 385.
N. Y. Reg. No. 7335.

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PLAINTIFF'S EXHIBIT 2.

Waiver of Notice and Minutes of First Meeting of Stockholders and Incorporators of Stoehr & Sons, Inc.

Held February 19th, 1917.

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Stoehr & Sons, Inc.

Waiver of Notice of First Meeting of the Stockholders and Incorporators of Stoehr & Sons, Inc.

We, the undersigned, being all the stockholders and incorporators of the above named Company, do hereby waive notice of the time, place and object of holding the first meeting of the stockholders and incorporators of the said Company, and do hereby appoint the office of the Company No. 200 Fifth Avenue, in the Borough of Manhattan, City of New York, as the place, and February 19th, 1917, at 4:30 o'clock P. M. as the time of holding said meeting, and do hereby consent to and ratify any and all action of the stockholders and incorporators taken at said meeting.

Dated, New York, February 19th, 1917.

MAX W. STOEHR.
GEORG G. RÖHLIG.
ALFRED DE LIAGRE.

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Stoehr & Sons, Inc.

*Minutes of First Meeting of the Incorporators and Stockholders of
Stoehr & Sons, Inc.*

The first meeting of the incorporators of Stoehr & Sons, Inc., was held on the 19th day of February, 1917, at 4:30 o'clock P. M. at the office of the Company, No. 200 Fifth Avenue, in the Borough of Manhattan, City of New York, pursuant to a written waiver of notice signed by all of the incorporators fixing said time and place.

The following incorporators were present in person:

Messrs. Max W. Stoehr, Georg G. Rohlig, Alfred de Liagre, being all the incorporators of the said Company and subscribers to stock of the corporation as shown by the Certificate of Incorporation.

Mr. Max W. Stoehr was elected chairman of the meeting and Mr. Alfred de Liagre was appointed secretary thereof.

The chairman reported that the certificate of incorporation of the Company was recorded and filed in the office of the Secretary of State of the State of New York on the 16th day of February, 1917, and a duplicate original of said certificate was recorded and filed in the office of the Clerk of the County of New York on the 17th day of February, 1917.

The Secretary presented a form of by-laws for the regulation of the affairs of the Company, which were read article by article
355 and unanimously adopted.

The following resolution was thereupon adopted:

Whereas the firm of Stoehr & Sons has offered to sell and transfer to this Company the business mentioned in their written offer presented to the meeting, in consideration of the issuance of the entire capital stock of the Company, viz: Two hundred and fifty thousand dollars (\$250,000), all of the same being common stock, full paid and non-assessable, and the assumption by this Company of all the liabilities of Stoehr & Sons; and

Whereas it appears to the stockholders of this Company that such business is necessary for this Company and that the same is at least of the fair and reasonable value of Two hundred and fifty thousand dollars (\$250,000) and the amount of said liabilities,

Resolved that the Board of Directors be and they hereby are authorized to purchase said business and to issue said stock in payment thereof.

Further resolved that the stock so to be issued in payment of the said business authorized to be purchased by the resolution set forth above, shall include the stock subscribed by the incorporators of this Company as evidenced by the certificate of incorporation.

Further resolved that the Company accept in payment of the subscriptions of the incorporators as evidenced by the certificate of incorporation, the business agreed to be sold to the Company as set forth in the preceding resolution.

Resolved further that the entire stock of the Company, viz: Two hundred and fifty thousand dollars (\$250,000), shall be full paid and non-assessable.

On motion duly made, seconded and carried, it was
356 Resolved that the seal an impression
of which is hereto affixed, be adopted (Impression of seal.)
as the corporate seal of the Company.

The following persons were thereupon elected directors of the Company: Messrs. Hans E. Stoehr, Max W. Stoehr, Georg G. Röhlig, Alfred de Liagre.

The following papers were ordered to be filed in this minute book for the purpose of reference:

1. Copy of certificate of incorporation.
2. Waiver of notice of meeting.
3. Original by-laws.

There being no further business before the meeting the same thereupon adjourned.

ALFRED DE LIAGRE,
Secretary.

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PLAINTIFF'S EXHIBIT 3.

Stoehr & Sons to Stoehr & Sons, Inc.

Offer and Bill of Sale.

Dated February 19, 1917.

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New York, February 19th, 1917.

Stoehr & Sons, Inc.,
New York City.

GENTLEMEN:

The undersigned partnership of Stoehr & Sons, does hereby offer to sell to your Company the business, property, good will, firm name and all other assets of Stoehr & Sons in consideration of Two hundred and fifty thousand dollars (\$250,000) of the common stock of your Company, full paid and non-assessable, and of the assumption by your Company of all the liabilities of Stoehr & Sons.

Yours truly,

STOEHR & SONS.

February 19th, 1917.

The foregoing offer is hereby accepted upon the above terms and the said liabilities are hereby assumed.

STOEHR & SONS, INC.,
By GEORG G. ROHLIG,
Vice-Pres.

MAX W. STOEHR, *Sec'y.*

359 Know all men by these presents, that we, Stoehr & Sons, co-partnership, for a valuable consideration, the receipt whereof is hereby duly acknowledged by us, have bargained, sold assigned, transferred and set over and by these presents do bargain, sell, assign, transfer and set over unto Stoehr & Sons Inc., a New York corporation, its successors and assigns, all fixtures, merchandise, office furniture, stock in trade, bank accounts, cash on hand, and in banks, bills receivable and bills payable, outstanding accounts, good will, the firm name and its exclusive use and any and all other assets of said co-partnership, to have and to hold the said transferred property, assets and accounts unto the said Stoehr & Sons Inc. its successors and assigns forever, and we do hereby give to the said Stoehr & Sons Inc. its successors and assigns full power and authority for its or their own use and benefit to ask, demand, collect, receive and give receipt for any of the outstanding accounts, accounts receivable or indebtedness owing to said co-partnership hereby transferred, and either in our name or in the name of said corporation or otherwise to prosecute any suit or proceeding at law or in equity to the same. In witness whereof we have hereunto signed our firm name this 19th day of February, 1917.

STOEHR & SONS.

In the presence of:
MAX W. STOEHR.

360 *Note for Printer Regarding Plaintiff's Exhibit 4.*

The endorsement on the back of Plaintiff's Exhibit 4, including the "Note", should be printed in full, following the exhibit.

361 Pl.'s Ex. 4.

A. P. C. Form No. 101.

File No. —.

Alien Property Custodian.

Report by a Corporation Incorporated within the United States, Unincorporated Association, Company, Trustee, or Trustees within the United States, Issuing Shares or Certificates Representing Beneficial Interests, under Section 7(a), "Trading with the Enemy Act."

Penalty.

Failure to make this report to the Alien Property Custodian as provided by law (see extract of act below) is punishable by imprisonment for not more than ten years or fine of not more than ten thousand dollars, or both.

Pursuant to the provisions of section 7(a) of the "Trading with the enemy Act," the Alien Property Custodian hereby requires a written statement under oath containing all the particulars specified in this form.

Instructions.

(1) Read carefully all of this report form and instructions before beginning to make report. Write legibly, using typewriter where possible.

(2) Person.—The word "person" is defined by section 2 of the act as follows:

"The word 'person,' as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic."

(3) Who Must Make This Report, and Whose Stock Must be Reported.—The first two paragraphs of section 7(a) of the act provide as follows:

"That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe, and, within sixty days after the passage of this act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

"The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another."

The Alien Property Custodian, acting under the authority vested in him by the President, including all power and authority to require lists and reports, has issued an order requiring such similar list of all stock or shares owned on February 3, 1917, by any such person defined as an enemy or ally of enemy or in which any such person had any interest; and also a list of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February 3, 1917, were owned or are

owned by such enemy or ally of enemy, though standing on the books in the name of another.

(4) Enemy.—For the purpose of this report, the word "enemy," as defined by section 2 of the act, includes the following:

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof."

Ally of Enemy.—For the purpose of this report, the words "ally of enemy," as defined by section 2 of the act, include the following:

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof."

(5) If a person, even an American citizen, is resident within the territory of an enemy or ally of enemy, including that occupied by its military and naval forces, his stock or shares must be reported.

(6) The term "enemy" or "ally of enemy," as used in this form, includes any person whom you may have reasonable cause to believe to be an enemy or ally of enemy.

(7) On October 6, 1917, the United States was at war with Germany; the allies of Germany were Austria-Hungary, Bulgaria, and Turkey.

362 (8) Do not leave any question unanswered. If a negative answer is intended, write "None" or "No."

(9) If the space provided in any schedule in this form is inadequate, a complete schedule in like form and bearing the corresponding schedule number must be prepared, signed, attached to this report, and made a part hereof. Do not put a part of the

information in the space on this form and part on an attached sheet.

Alien Property Custodian, Washington, D. C.:

The undersigned, in pursuance of section 7 (a) of the "Trading with the Enemy Act," approved October 6, 1917, transmits to the Alien Property Custodian the following lists of every officer, director, or stockholder of the undersigned known to be, or whom the representative of the undersigned has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned at any time on or after October 6, 1917, by each such officer, director, or stockholder, or in which he had or has any interest; and a similar list of all stock or shares owned on February 3, 1917, by any person defined in the act as an enemy or ally of enemy, or in which any such person had any interest; and also a list of all cases in which the undersigned has reasonable cause to believe that the stock or shares on February 3, 1917, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another; to wit:

NOTE.—Before receipt of this form a report was made by letter under date of December 3, 1917, to the Alien Property Custodian.

(1) Name of corporation, unincorporated association, company, trustee, or trustees making report:
Stoehr & Sons Inc.

(2) Address of principal place of business:
200 Fifth Avenue, New York City, New York, New York.
(No.) (Street.) (City.) (County.) (State.)

(3) State whether corporation, unincorporated association, company, trustee or trustees.
Corporation.

(4) If corporation, state where incorporated; if unincorporated association, company, trustee or trustees, state how created, or how organized.
New York State.

Schedule 1.

Enemy or Ally of Enemy Officers and Directors on or After October 6, 1917.

Name.	Official position.	Last known residence.	Nationality.
None.	None.		

Schedule 2.

Enemy or Ally of Enemy Holders of Stock, Shares, or Certificates of Beneficial Interests on or After October 6, 1917.

(Include herein the officers and directors holding stock, shares or certificates.)

Name of registered owner.	Name of enemy or ally of enemy who is stockholder or for whom stock is held.	Residence (if unknown, last known address).	Nationality.	No. of shares.	Par value of each share.	No. of certificates.	Class or kind of stock.	Amount of dividends unpaid.	Actual location of certificate.
Max W. Stoehr Trustee.	1293 Eduard Stoehr	Leipzig Germany.	German	1875	\$100	1	Common stock voting trust certificate	6%	In possession Max W. Stoehr of Passaic, N. J.
	532								
Max W. Stoehr Trustee	Georg Stoehr	"	"	222 21/100	\$100	3	"	6%	"

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Schedule 3.

Enemy or Ally of Enemy Holders of Stock, Shares, or Certificates Representing Beneficial Interests on February 3, 1917.

(Include herein the officers and directors holding stock, shares, or certificates.)

Name of registered owner who is enemy or ally of enemy.	Residence (if unknown, last known address).	Nationality.	No. of shares.	Par value of each share.	No. of certificate.	Class or kind of stock.	Amount of dividends unpaid.	Actual location of certificate.
Name	Name	.....	.....	.....	.....	.....	.....	.....

Schedule 4.

List of All Cases in Which the Undersigned Has Reasonable Cause to Believe That the Stock or Shares on February 3, 1917, Were Owned or Are Owned by an Enemy or Ally of Enemy, though Standing on the Books in the Name of Another.

Name of registered owner.	Name of enemy or ally of enemy for whom stock is believed to be held.	Residence (if unknown, last known address).	Nationality.	No. of shares.	Par value of each share.	No. of certificate.	Class or kind of stock.	Amount of dividends unpaid.	Actual location of certificate.
Name of registered owner.	Name of enemy or ally of enemy for whom stock is believed to be held.	Residence (if unknown, last known address).	Nationality.	No. of shares.	Par value of each share.	No. of certificate.	Class or kind of stock.	Amount of dividends unpaid.	Actual location of certificate.

Stoehr & Sons, Inc.

Note Attached to List of Stockholders, &c., on Form 101, Made to Alien Property Custodian.

This Company was not in existence on February 3rd, 1917. However it states for the information of the Alien Property Custodian that it was organized on February 19, 1917 under the Laws of the State of New York, to take over and become the successor to Stoehr & Sons, a partnership at 200 Fifth Avenue, Borough of Manhattan, City of New York, consisting of four partners, namely Hans E. Stoehr, New York City, Max W. Stoehr of Passaic, N. J., Edward Stoehr and Georg Stoehr, the two latter of Leipzig, Germany. The capital stock of the Company was issued to the four partners in the same proportion as their interest in the partnership and the corporation assumed the indebtedness of the partnership.

STOEHR & SONS, INC.,
Per MAX W. STOEHR,
Treas.

The following question must also be answered by the person making this report:

Did you on February 3, 1917, or at any time on or after October 6, 1917, hold, have, or have the custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of any person who is an enemy or ally of enemy, or whom you may have reasonable cause to believe to be an enemy or ally of enemy, and of which you have not yet made report to the Alien Property Custodian, or were you on February 3, 1917, or at any time on or after October 6, 1917, in any way indebted to any such person and have not yet made report of such debt to the Alien Property Custodian?

Answer: No. (See typewritten note attached.)
(If the question is answered in the affirmative, additional forms will be furnished upon request.)

(Signature of party making report.)

[SEAL.]

STOEHR & SONS, INC.,
MAX W. STOEHR,
Treasurer & one of the voting trustees.

(Corporations or associations should sign by officer or duly authorized representative, and should affix corporate or official seal.)

Affidavit of Individual Trustee or Trustees Making Report.

STATE OF ———,
County of ———, ss:

I/We swear (or affirm) that the foregoing report and answers therein made are true and correct.

Subscribed and sworn to before me this ——— day of ———, 191—
—————,
—————.

Affidavit of Officer or Representative of Corporation or Association Making Report.

STATE OF NEW YORK,
County of New York, ss:

I swear that I am the Treasurer of the corporation making the foregoing report, and that the foregoing report and answers therein made are true and correct.

MAX W. STOEHR.

Subscribed and sworn to before me this 6th day of December, 1917.
GEO. DEWITT WEEKS,
Notary Public.

Kings County, N. Y. No. 34.

364a [Endorsed:] Report No. 4845. Trust No. 532 & 1293.
(Do not write on this back, which is to be filled out only in the office of Alien Property Custodian.) Alien-property Custodian. Report by a Corporation Within the United States, Unincorporated Association, Company, Trustee, or Trustees Within the United States. Issuing Shares or Certificates Representing Beneficial Interests, under the First Two Paragraphs of Section 7 (a), "Trading with the Enemy Act." ———, Reporting Corporation. 1-19-1918. Received and entered in Register of Reports and referred to Director, Bureau of Investigation. K. W. Greene, Report Register Clerk, Accounting Section, Division of Accounts. Dec. 17, 1917. Referred to Director, Bureau of Trust with action of this Bureau attached. F. P. Gamon, Director, Bureau of Investigation. ———, 191—. Received and credited to Bureau of Investigation in Register of Reports and referred to Division of Individual Property—Corporations. ———, Director, Bureau of Trusts. ———, 191—. Referred to ———, Chief of Division of Individual Property—Corporations. ———, 191—. Referred to ———. ———. Filed by ———. Date filed.

NOTE.—Before receipt of this form a report was made by letter under date of December 3, 1917, to the Alien Property Custodian.

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PLAINTIFF'S EXHIBIT 5.

Agreement made this 19th day of February, in the year 1917, between all the stockholders of Stoehr & Sons, Inc., hereinafter called "stockholders," parties of the first part, and Hans E. Stoehr, Max W. Stöhr and Georg Röhlig, hereinafter called "voting trustees," parties of the second part.

Whereas, the stockholders deem it to their interest to act together concerning the management of Stoehr & Sons, Inc., and to that end to unite the voting power held by them as such stockholders and to place the same in the hands of the voting trustees as hereinafter provided.

Now, this agreement made in consideration of the premises and of the mutual covenants herein contained and of One (\$1.00) dollar by each of the parties hereto in hand paid, witnesseth as follows:

(1) Each of the stockholders hereby severally agree to deposit the stock and the certificates therefor and each of said stockholders has so deposited the same and the certificates therefor with sufficient transfers thereof in favor of the persons hereinbefore named as voting trustees, with the said voting trustees, thus placing in the hands of the voting trustees the entire capital stock of said Stoehr & Sons, Inc., and each of said stockholders shall receive in exchange therefor the trust receipts or certificates hereinafter referred to, which deposit shall continue for the period of five (5) years from the date of this agreement, that is, until the 19th day of February, 1922, and said voting trustees are authorized to cause the stock certificates so deposited to be transferred upon the books of the said company to the names of said voting trustees and to cause such further or other transfers to be made as may become necessary through the occurrence of any change of the persons holding the office of voting trustee as hereinafter provided and during said period and until February 19,

1922, the voting trustees shall possess and be entitled to
366 exercise all rights of every name and nature, including the right to vote in respect to any and all such shares deposited; it being, however, understood that the holders of the trust certificates to be issued by the voting trustees as hereinafter provided shall be entitled to receive payments equal to the dividends, if any, collected by said voting trustees upon the shares of stock of the said company standing in their name.

(2) The voting trustees hereby promise and agree with the said stockholders and with every holder of certificates issued as herein-after provided, that the said trustees will cause to be issued to each of the several stockholders a receipt or certificate for the number of shares transferred and delivered to the voting trustees in substantially the form of the trust receipt or certificate set forth in Exhibit A hereto annexed and made part hereof.

(3) At the expiration of the said period, to wit, after February 19, 1922, and within (10) days after demand the voting trustees

in exchange for and upon the surrender of the aforesaid trust receipts or certificates then outstanding will in accordance with the terms hereof, deliver to the then holders of the trust receipts or certificates, proper certificates of the equivalent kind and amount of the common stock of the said company.

(4) All questions arising between the voting trustees shall from time to time be determined by the decision of at least two of the three voting trustees either at a meeting or by writing with or without a meeting and in like manner said voting trustees may establish rules of action under this agreement. The decision or act of two of the voting trustees shall for the exercise of the voting power and for all purposes of this agreement, be deemed the decision or act of all the voting trustees. At any meeting of the voting trustees, the presence of two of said trustees shall be necessary to constitute
367 a quorum and no action shall be taken without such quorum.

(5) In voting the stock held by them the voting trustees will exercise their best judgment from time to time to select suitable directors to the end that the affairs of the company shall be properly managed and in voting on any other matters which may come before them at any stockholders' meeting, will exercise like judgment, but it is understood that no voting trustee assumes or incurs any responsibility by reason of any error of judgment or error of law or of any matter or thing done or omitted under this agreement except for his own individual malfeasance.

(6) In the event that a vacancy or vacancies shall occur in the office of voting trustee then the same shall be filled as follows:

(a) In case of the death, resignation or disability of either of said voting trustees such trustee shall be succeeded by Alfred de Liagre.

(b) In the event of the death, resignation or disability of either of said voting trustees, and if by reason of the death, resignation or disability, or for any other reason said vacancy cannot be filled by Alfred de Liagre, or in case more than one of said voting trustees shall die, resign or be disabled, or in the event that a vacancy or vacancies occur in the office of voting trustee which has not been otherwise provided for herein, then any such vacancy or vacancies shall be filled by the surviving trustee or trustees, and in such event such surviving trustee or trustees shall fill such vacancy by the appointment of a successor or successors, such appointment to be made by designating such successor or successors in writing and obtaining from such successor or successors his acceptance of the trust in writing. The term "voting trustees" as herein used shall apply to the parties of the second part as well as their successor or successors hereunder, and such successor or successors shall have
368 the same powers, obligations, duties and discretion as are herein vested in the voting trustees named herein.

In witness whereof the several parties hereto have hereunto set their hands and seals the day and year first above written and the

voting trustees have hereunto set their hands and seals in token of their acceptance of the trust hereby created.

HANS E. STOEHR,
MAX W. STÖHR,
Stockholders.

HANS E. STOEHR,
MAX W. STÖHR,
GEORG G. RÖHLIG,
Voting Trustees.

In the presence of:
HERBERT A. HEYN.

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EXHIBIT A.

Trust Receipt or Certificate.

This is to certify, that as hereinafter provided — — will be entitled to receive a certificate or certificates for — fully paid shares of the par value of one hundred dollars each, in common stock of Stoehr & Sons Inc. on February 19, 1922, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned voting trustees upon a like number of shares of such common stock standing in their names. And until the 19th day of February, 1922 the voting trustees shall possess and be entitled to exercise all rights of every name and nature, including the right to vote in respect of any and all such stock; it being expressly stipulated that no voting right passes to the holder thereof by or under this certificate, or by or under any agreement, express or implied.

This certificate is issued pursuant to the terms of an agreement in writing, dated the 19th day of February, 1917 and entered into between all stockholders of said company and said voting trustees.

This certificate is transferable only on the books which shall be kept for that purpose by said voting trustees, by the registered holder, either in person or by attorney, duly authorized, according to rules which shall be established for that purpose by said voting trustees, and on surrender hereof; and until so transferred, the said voting trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that the delivery of such certificates hereunder shall not be made without the surrender hereof.

This certificate is not valid unless signed by the voting trustees.

In witness whereof said voting trustees have caused this
370 certificate to be signed this — day of —, 19—.

_____,
_____,
_____,
Voting Trustees.

371 Plaintiff's Exhibit 6 should be printed: (a) the face, without of course the blue stamps of the word "Void;" (b) the extract from the by-laws at top of page 2, and one of the brackets

containing a form of assignment with the blank lines properly spaced, and then the following:

"Said form of certificate on four pages contained 21 other blank forms of assignments similar to the foregoing, printed upon the second, third and fourth pages thereof."

(c) Following this should come the talon printed in full, without of course the stamped word "Void", and then following that talon should be printed in full the last coupon, No. 56, reading:

"For the second half of the business year 1917" and following that coupon should be printed the following:

"Said talon also had four other printed forms of coupons for dividends, namely for the first half of the year 1918, preliminary dividend, for the second half of the year 1918, final dividend, and for the first half of the year 1919, preliminary dividend, and for the second half of the year 1919, final dividend."

(Here follows reproduction of bond, marked Plaintiff's Exhibit No. 6, pages 372-374, and coupons, marked page 375.)

FOLD*OUTS ARE TOO LARGE TO BE FILMED

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PLAINTIFF'S EXHIBIT 7.

Waiver of Notice of Meeting and Minutes of Meeting of the Board of Directors of Stoehr & Sons, Inc., Held February 20th, 1917.

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Stoehr & Sons, Inc.

Waiver of Notice of Meeting of the Board of Directors of Stoehr & Sons, Inc.

We, the undersigned, being all the directors of the above named Company, do hereby waive notice of the time, place and object of holding a meeting of the Board of Directors of said Company, and do hereby appoint the office of the Botany Worsted Mills, at Passaic, New Jersey, as the place, and February 20th, 1917, at 10:30 o'clock A. M. as the time of holding the said meeting, and do hereby consent to and ratify any and all action of the Board of Directors taken at said meeting.

Dated New York, February 20, 1917.

HANS E. STOEHR
MAX W. STOEHR.
GEORG G. ROHLIG.
ALFRED DE LIAGRE.

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Stoehr & Sons, Inc.

Minutes of Meeting of the Board of Directors of Stoehr & Sons, Inc.

A meeting of the Board of Directors of the above named Company was held on the 20th day of February, 1917, at 10:30 o'clock A. M. at the office of the Botany Worsted Mills, at Passaic, New Jersey, pursuant to a written waiver of notice signed by all of the directors fixing said time and place.

The following directors were present:

Messrs. Hans E. Stoehr, Max W. Stoehr, Alfred de Liagre, Georg G. Rohlig, constituting the entire Board of Directors.

Mr. Hans E. Stoehr, president, presided and Mr. Max W. Stoehr acted as secretary of the meeting.

The secretary presented and read a waiver of notice of the meeting signed by all of the directors which was ordered filed in this minute book.

The minutes of the meeting of the Board of Directors held on the 19th day of February, 1917, were read and approved.

The matter of the purchase of Fourteen thousand nine hundred (14,900) shares of the capital stock of the Botany Worsted Mills was presented to the meeting and was discussed.

A form of proposed contract between this Company and the corporation of Kammingarnspinnerei Stoehr & Company relating to the said purchase was laid before the meeting.

On motion duly made, seconded and carried, the said contract was approved and the Vice President and Secretary of the Company were directed to execute the same in Passaic, New Jersey, for
379 and on behalf of this Company.

There being no further business before the meeting the same thereupon adjourned.

MAX W. STOEHR,
Sec'y.

380 Plaintiff's Exhibit 8 is attached to the Bill of Complaint and marked Exhibit I; therefore the printing of same is unnecessary.

381 PLAINTIFF'S EXHIBIT 9.

A. P. C. Form No. 106-A.

Report No. 5263.
Trust No. F-4017.

Original.

Demand on Corporation for Stockholder's Interest Without Presentation of Certificates.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

"Any payment, conveyance, transfer, assignment or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had

any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

Sec. 1 (c). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power, and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the Enemy Act' and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Sec. 3 (d). "The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to, and over corporate stock, shares, or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company, or trustee which issued such stock, shares, or certificates, to the holders or owners of similar stock, shares, or certificates, (2) the right to exercise all voting power appertaining to such stock, shares, or certificates, and (3) the right to receive all subscription rights, dividends, and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares, or certificates, regardless of whether or not such stock, shares, or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares, or certificates have been trans-

ferred to the Alien Property Custodian upon the books of the corporation, association, company, or trustee issuing the same."

To Betsey Worsted Mills,

Address, Dayton Avenue, Passaic, New Jersey:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders, after investigation do determine that: *Stoehr & Company,*
(Name of enemy or ally of enemy.)

(Kammgarn Spinnerei) whose address is Leipzig, Germany, is an
(Last known address.)

enemy (not holding a license granted by the President), and has a certain right, title, and interest in and to 14,900 shares of Common stock standing on your books in the name of *Stoehr & Company,*
(Common, preferred.)

Soma, Incorporated.

I, as Alien Property Custodian, do hereby require that you shall convey, transfer, assign, and deliver to me as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law, every right, title, and interest of the said enemy in said stock, including in respect to the said stock the right which the said enemy may have, (a) to receive all notices issued by you to the holders or owners of similar stock, shares, or certificates; (b) to exercise all voting power appertaining to such stock, shares, or certificates; (c) to receive all subscription rights, dividends, and other distributions and payments, whether of capital or of income, declared or made on account of such stock, shares, or certificates.

I, as Alien Property Custodian, do hereby further require that you note the substance of this demand upon your stock books and/or stock ledger, and that you furnish a copy of this demand to the registrar and/or transfer agent, if any, of the stock in respect to which this demand is made.

I, as Alien Property Custodian, do hereby further require that within ten days from the service of this demand upon you, you report to me any and all acts which you have done, or omitted to do, pursuant to the requirements of this demand.

Until otherwise directed, you will remit to the Alien Property Custodian at Washington, by check payable to his order, all payments, whether of capital or income, now or hereafter declared or due on account of such stock, shares, or certificates, and you will direct such notices in respect to the said stock, shares, or certificates to the Alien Property Custodian.

This demand is supplementary to any demand which may hitherto have been made upon you, accompanied by the presentation of certificates which represent shares or beneficial interests, for the transfer into my name, as Alien Property Custodian, of such certificates, or for the transfer thereof into the name of any nominee of me as

Alien Property Custodian, and this demand shall not prejudice or affect any demand accompanied by such certificates which has been, or which may hereafter be, made.

Witness my hand and seal of office, this 5th day of April, 1918.

A. MITCHELL PALMER,

Alien Property Custodian,

(Sgd.)

By T. L. DAVIS,

Managing Director.

Attached to the foregoing exhibit was a rider pasted on the face of said exhibit, which rider was as follows:

A. P. C.-M. M.-188.

You are hereby instructed to remit all accumulated dividends direct to this office upon receipt hereof. If checks for accumulated dividends have heretofore been drawn in favor of the enemy and are now held by you, you may send such checks direct to this office. All future dividends shall be remitted to Peoples Bank & Trust Co. as depository for Alien Property Custodian, Trust No. F-4017, which has been duly designated as the depository of this trust.

You will also direct all notices hereby demanded, to said depository and identify each notice by the trust number heretof.

382 Service of the within demand accepted this — day of —, 191—.

— — —.

Served the within notice and demand on the within-named —, at — Street in the City of —, State of —, this — day of —, 191—, by giving a true and correct copy thereof to —, a — of the corporation of whom said demand is made, at the office of said corporation.

— — —.

Served the within demand and notice on the corporation to which this demand is addressed, by transmitting a true and correct copy thereof to the said corporation at the address which appears on the face hereof, in a securely fastened official franked wrapper, registered at the post office at — in the city of Washington, on the — day of —, 191—.

— — —.

Alien Property Custodian, Washington, D. C. Inclosure No. 6650. A. P. C. 72.

(Here follows reproduction of book, marked Plaintiff's Exhibit 10, pages 383-396.)

PLAINTIFF'S EXHIBIT 11.

Financial Statement Botany Worsted Mills, Passaic, N. J.

[Cut of Trade-mark.]

November 30th, 1917.

Passaic, N. J., July 23rd, 1918.

To the Stockholders of Botany Worsted Mills:

The Treasurer respectfully submits the following financial report of your Company for the year ended November 30th, 1917:

The sales of the Company for the year were \$28,191,088. as compared with \$18,446,898. for the previous year. This increase was largely due to advance in prices occasioned by the reduction of importations into this country, to the marked advance in prices of raw material, and to the unusual conditions produced by the war. The Company is now engaged to a large extent in filling contracts with the U. S. Government on which it expects to make only a small profit.

The Net Profits for the year after deducting all charges and operating expenses excluding Reserve for Excess Profits

and Federal Income Taxes were\$6,611,162.73

Deduct:

Interest for the year on 6% Gold Bonds..... 102,010.00

Net Income 6,509,152.73

Less Reserve for Excess Profits and Federal Income
Taxes 3,005,640.41

Net Income, applicable to Surplus 3,503,512.32

Surplus November 30th, 1916..... 1,765,877.52

Amount transferred to Surplus from Reserve for De-
preciation in Buildings, and Machinery & Fixtures
(considered excessive) 2,139,975.94

7,409,365.78

Less Dividends paid on Capital Stock during the year,
one of 3% and one of 14% 612,000.00

Surplus November 30th, 1917\$6,797,365.78

399 Botany Worsted Mills Financial Statement, November 30th, 1917.

Assets.

Real Estate, Machinery and Fixtures. . \$8,257,280.99
Raw Wool, Finished Goods and Op-
erating Supplies 15,371,871.12
Stock in Other Companies and Lib-
erty Bonds 319,000.00
Cash 325,943.04
Accounts and Bills Receivable 4,619,681.97

Total Assets\$28,893,777.12

Liabilities.

Capital Stock\$3,600,000.00
6% Debenture Gold
Bonds maturing Jan.
1, 1922\$1,000,000.00
Less Bonds in Treasury. 250,000.00
\$750,000.00
6% Debenture Gold
Bonds maturing Oct.
1, 1927 to 1931..... 1,000,000.00
1,750,000.00

Unclaimed Dividends and Bond Inter-
est 32,513.10
Accrued Interest on Bonds to Nov. 30,
1917 28,750.00
Paid in Surplus 1,050,000.00
Reserve for Excess Profits and Federal
Income Taxes 3,005,640.41
Other Reserve Funds 3,152,496.70
Accounts and Bills Payable 9,477,011.13

Total Liabilities\$22,096,411.34

Surplus November 30th, 1917 \$6,797,365.78

Respectfully submitted,

THOMAS J. MALONEY,
Treasurer.

PLAINTIFF'S EXHIBIT 12.

Balance Sheet, Botany Worsted Mills, Passaic, N. J.

November 30, 1918.

Assets.		Liabilities.	
Real Estate		Capital Stock	\$3,600,000.00
Buildings, Mill Buildings, Dwellings,		Debtenture Gold Bond Issues:	
Filter Plant	\$513,571.71	Issue due January 1, 1922	\$1,000,000.00
Machinery and Equipment	3,598,040.88	Issue due October 1, 1927-1931	1,000,000.00
Furniture and Utensils	4,836,596.53		
Automobiles	15,000.00		
Cash:	7,500.00		
At Mill	\$74,494.34		
In Banks	1,035,076.01		
War Savings & Thrift Stamps for Dis-		Less Bonds in Treas-	\$2,000,000.00
tribution	1,109,570.35	ury	287,500.00
Stocks and Bonds:	1,255.39	Special Reserve in accordance with By-	1,712,500.00
1st Liberty Loan	90,000.00	laws, etc.	1,050,000.00
2nd " "	185,000.00	Reserve for Pensions	200,000.00
3rd " "	500,000.00	Reserve for Depreciation	
4th " "	1,500,000.00	on Buildings, Machin-	
		ery, & Fixtures	\$2,977,053.82
		Added for year ending	
Others	\$2,275,000.00	Nov. 30/18	421,731.87
	44,000.00		
Suspense Account:		Reserve for War Profits & Income Taxes	3,398,785.69
Claims for low yield of Wool &		Deferred Compensation to Board of Di-	*4,681,342.19
Transportation claims	236,757.76	rectors for year ending November 30,	
		1917	74,743.16

FOLD*OUTS ARE TOO LARGE TO BE FILMED

FOLD-OUTS ARE TOO LARGE TO BE FILMED

402 The following are the defendants' exhibits:

403 DEFENDANTS' EXHIBIT "A."

Agreement of Copartnership of Stoehr & Sons.

Agreement made as of May 1, 1913, between Kommerzienrat Eduard Stoehr, of Rietzmeck a/d Elbe, Germany, (first party), Hans E. Stoehr, of New York City, (second party), Georg Stoehr of Leipzig, Germany, (third party) and Max Wilhelm Stoehr of Passaic, New Jersey, (fourth party), witnesseth as follows:

First.

The first three parties above-named have been co-partners since May 1, 1913, and do hereby agree to continue the said co-partnership and further agree to take in the fourth party as a partner. The terms of said co-partnership shall be as hereinafter set forth:

Second.

(a). Name of the Co-partnership.—Its name shall be Stoehr & Sons.

(b). Place of Business.—Its principal place of business and main office shall be in New York City, State of New York, under the laws of which state this agreement is made; all questions arising as to the co-partnership or as to the rights, duties or obligations of its members or as to this agreement shall be determined by the laws of said state.

(c). Duration.—This agreement and the co-partnership shall continue for three (3) years from May 1, 1913, to wit: until the first day of May, 1916. In the event that written notice of his desire to terminate the contract shall not be given by one or more of the parties at least one (1) year prior to said last mentioned date, then the co-partnership shall continue for a further year after May 1st,
404 1916 and thereafter from year to year subject only to the right of any partner to give a year's notice of termination which notice shall then be effective upon the 1st day of May of the following year.

(d). Fiscal Year.—The fiscal year shall begin on the 1st day of May and end on the 30th day of April of each year.

Third.

Purposes of the Copartnership.

The copartnership shall do a general mercantile and commission business, engage in the purchase, lease or sale of real or other property including the purchase and sale of shares of stocks and other

securities as well as of goods and merchandise, may own any of such shares or property, participate in industrial enterprises, purchase, lease and sell and be interested in textile and other factories, and dispose of the output of such factories;—in general it is the purpose of the co-partnership to promote the interests of the partners and of their families by consolidating various property interests and to manage said property interests through this copartnership.

Fourth.

Active and Silent Partners.

Kommerzienrat Eduard Stoehr (the first party) and Hans E. Stoehr (the second party) shall be the active partners and Georg Stoehr (the third party) and Max Wilhelm Stoehr (the fourth party) shall be the silent or passive partners. The active partners shall have the sole charge and the conduct of the business, shall represent the co-partnership, shall have the sole right to make and sign contracts or other papers relating to the affairs of the co-partnership or to incur any liability in its behalf. The silent or passive
405 partners shall not, without the written consent of the active partners, participate in the conduct of the business or represent the copartnership or sign or incur any liability in its behalf. The active partners shall have the right to conduct the business in such manner as they may think best except that no transaction involving a value of more than \$25,000 shall be consummated without the written consent of all the partners.

Fifth.

Voting Control.

In the determination of any question relating to the copartnership, the first party shall have four (4) votes; the second party shall have two (2) votes and the third and fourth parties shall each have one (1) vote. In the event that the active partners shall not agree upon any proposition or matter relating to the business, then the question shall be presented for determination to all the partners and the majority vote of all the partners shall be decisive of any such question. In case of the death of any of the partners the voting shall thereafter be on the basis of and in proportion to the capital contribution of each partner as fixed in paragraph "Sixth" hereof.

Sixth.

Capital and Distribution of Profits.

(a). Each partner has contributed the following capital:

Kommerzienrat Eduard Stoehr (the first party)	\$420,000
Hans E. Stoehr (the second party)	80,000
Georg Stoehr (the third party)	50,000
Max Wilhelm Stoehr (the fourth party)	10,000
Total	<u>\$560,000</u>

406 There shall be no change without the consent of all the partners in the relative proportion of capital contributed as above set forth; in the event that any partner contributes additional sums or property or allows his profits to stand on the books of the co-partnership he shall be entitled to interest at the rate of six (6) per cent but such sums or property shall be kept as separate credits on the books without changing the amount of the capital contributed by him.

(b). The profits arising from the business shall be distributed among the parties as follows:

To the first party \$2,000 annually; to the second party \$5,000 annually;—which said sum of \$7,000 shall be in payment of their services as active partners. The balance of the profits shall be divided among all the partners in proportion to the amount of their contribution of capital as above stated. The profits shall be determined annually at the close of the fiscal year by inventory and by the closing of the books as is customary and usual among merchants. In the event that the business shows a loss such loss shall be borne in the same proportion in which the profits are divided.

Seventh.

Continuance in Case of Death.

In the event of the death of any of the co-partners the partnership shall not cease but shall continue; the survivors in such event shall have the right to continue the business, to use the firm name and to take over the name, good will and all other property of the co-partnership (it being agreed that in case of such death, his legal representatives shall have the same right to a specific distribution of any shares of stock owned by the co-partnership as is provided in case of dissolution in Paragraph Eighth hereof) and such survivors shall assume all the liabilities of the firm. By the unanimous consent of all the survivors, the legal representatives of the deceased may be taken into the copartnership. In the event

407 that such unanimous consent is not given or that for any

other reason the legal representatives of the deceased do not become members of the copartnership then the estate of the deceased shall be entitled to the sum shown by the last annual balance as the share of the deceased in the copartnership with interest thereon (if interest has been earned since said last annual balance) and upon payment of said sum with such interest, either in cash or in specie by the distribution of shares of stock, the estate of said deceased shall have no further claim to any of the property, good will or other assets of the copartnership. Each partner agrees to make testamentary provision enabling his legal representatives to enter the copartnership in the place of the testator.

Eighth.

Dissolution.

In the event of the dissolution of the co-partnership an inventory shall be taken and an account shall be stated between the partners, and the balance shown on the books of the copartnership shall be distributed in the proportion of the contribution of each partner to the capital of the copartnership as then shown on the books. In the event that at the time of such dissolution the copartnership shall own shares of stock in any corporation, then the proportional amount of such shares of stock to which each partner or his estate may be entitled shall not be sold without his consent but shall be specifically distributed and transferred to him or to his estate if he or his estate so elects; it being the intention that in the event of the dissolution of the said copartnership the liquidation of its affairs shall as
408 far as possible be conducted by specifically distributing any shares of stock owned by the copartnership to each of the partners in proportion to the amount of their respective contribution to the capital of the co-partnership. In the event that for the purpose of said distribution it should be necessary to place a value upon any stock so to be specifically distributed and the partners or the survivors of them cannot agree among themselves as to the same, then the value to be placed upon such stock at the time of said distribution shall be the price at which the stock shall have been taken over by the copartnership or if it has been purchased by the copartnership at the cost price thereof.

Ninth.

Miscellaneous Provisions.

(a). Voting Power on Shares of Stock.—The voting power on all shares of stock in European corporations owned by the copartnership shall be exercised by the first party who shall have a proxy for that purpose with power of substitution. The voting power on all shares of stock in American corporations owned by the copartnership shall be exercised by the second party who shall have a proxy for that purpose with power of substitution. The proxies and powers of at-

torney hereby conferred may be cancelled or the method of the exercise of same may be changed at any time by a majority vote of the partners. It is further agreed that any of the partners or any other persons may be designated at any time as proxies and given the right to vote on any of the shares of stock herein mentioned provided the majority of the partners so determine.

409 (b). The partners agree that during the continuance of the contract no part of the capital contributed by any of them shall be withdrawn but that the same shall remain in the firm at the amount hereinbefore specified.

(c). On all calculations among the partners a dollar shall be figured at Four marks 20 pf.

In witness whereof the parties hereto have set their hands and seals as of the date and year above mentioned.

(Sgd.)

HANS E. STOEHR.

(Sgd.)

GEORG STOEHR.

(Sgd.)

MAX W. STÖHR.

In the presence of:

(Sgd.) HERBERT A. HEYN.

(Sgd.) HERBERT A. HEYN.

(Sgd.) HERBERT A. HEYN.

[Endorsed:] Kommerzienrat Eduard Stoehr, Hans E. Stoehr, Georg Stoehr and Max Wilhelm Stoehr. Agreement of Copartnership of Stoehr & Sons. Heyn & Covington, Counsellors at law, 60 Wall Street, New York City.

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DEFENDANTS' EXHIBIT B.

One Hundred and Thirty-five

Central Park West,

New York City.

October 21, 1918.

James N. Wallace, Esq.,
President Stoehr & Sons, Inc.,
54 Wall Street,
New York City.

DEAR SIR:

I am sorry that the invitation to the last meeting of the Board of Directors of Stoehr & Sons, Inc., did not reach me in time to attend the meeting.

As I have been informed by Messrs. Davies, Auerbach & Cornell, attorneys for the estate of the late Mr. E. H. Stoehr, of which I am executor, that matters of vital importance have been acted upon, I would thank you, if you would arrange to have a copy of the minutes

of such meeting sent to me, so that I may be advised about the business that came before the Board at that time.

I would also thank you, if you would, in future, arrange to have all communications addressed to me as above.

Very truly yours,
(Signed)

MAX W. STOEHR.

411 DEFENDANTS' EXHIBIT C.

October 22, 1918.

Stoehr & Sons, Inc.

Mr. Max W. Stoehr,
135 Central Park West,
New York City.

DEAR SIR:

Mr. Wallace forwarded me your letter of October 21st to him.

At the last meeting of the Board of Directors of Stoehr & Sons, Inc., held October 16, 1918, your resignation as a director was presented and accepted by the Board, as also your resignation as Secretary of the Company.

I enclose you with this a copy of the minutes of that meeting.

Yours very truly,

JOHN QUINN.

412 DEFENDANTS' EXHIBIT D.

135 Central Park West,
New York, October 25, 1918.

John Quinn, Esq.,
31 Nassau Street,
New York City.

DEAR SIR:

I received your letter dated October 22nd this morning, with the enclosure, and I thank you for the same.

Very truly yours,
(Sgd.)

MAX W. STOEHR.

413 DEFENDANTS' EXHIBIT E.

Stoehr & Sons, Inc.

Waiver of Notice of Meeting of the Board of Directors of Stoehr & Sons, Inc.

We, the undersigned, being all the directors of the above named Company, do hereby waive notice of the time, place and object of holding a meeting of the Board of Directors of said Company, and

do hereby appoint the office of the Company No. 200 Fifth Avenue, Borough of Manhattan, City of New York, as the place, and April 5th, 1917, at three o'clock p. m. as the time of holding the said meeting, and do hereby consent to and ratify any and all action of the Board of Directors taken at said meeting.

Dated New York, April 5th, 1917.

HANS E. STOEHR.
GEORGE G. RÖHLIG.
MAX W. STÖHR.
ALFRED DE LIAGRE.

Minutes of Meeting of the Board of Directors of Stoehr & Sons, Inc.

A meeting of the Board of Directors of the above named Company was held on the 5th day of April, 1917, at three o'clock p. m. at the office of the Company, No. 200 Fifth Avenue, in the Borough of Manhattan, City of New York, pursuant to a written waiver of notice signed by all the directors fixing said time and place.

The following directors were present:

Messrs. Hans E. Stoehr, Max W. Stoehr, Alfred de Liagre, Georg G. Röhlig, constituting the entire Board of Directors.

Mr. Hans E. Stoehr presided and Mr. Max W. Stöhr acted as Secretary of the meeting.

The secretary presented and read a waiver of notice of the meeting signed by all of the directors which was ordered filed in this minute book.

The minutes of the meeting of the Board of Directors held on February 20, 1917, were read and approved.

The matter of the salaries of the president and treasurer were brought before the meeting, and the same were discussed by the meeting.

Upon motion duly made, seconded and carried the following resolution in reference to the salary of the president was thereupon unanimously adopted (Mr. Hans E. Stoehr not voting and taking no part):

Resolved, that the salary of the president shall consist of a fixed sum and a commission or percentage of the profits of the Company; the fixed sum shall be \$24,000 per annum, payable monthly and

the commission shall be six (6%) per cent. of the profits of
415 the Company; such commission or percentage shall be computed at stated times, but at least every six months, and to be credited to his account, and shall be charged as an expense of the business. This commission or percentage shall, however, only be payable in the event that the Company shall earn and pay a dividend on its capital stock of at least six (6%) per cent. per annum.

Upon motion, duly made, seconded and carried, the following resolution in reference to the salary of the treasurer was thereupon unanimously adopted (Mr. Max W. Stöhr not voting and taking no part):

Resolved, that the salary of the treasurer shall consist of a fixed sum and a commission or percentage of the profits of the Company; the fixed sum shall be \$18,000 per annum, payable monthly, and the commission shall be five (5%) per cent. of the profits of the Company; such commission shall be computed at stated times, but at least every six months and shall be credited to his account and shall be charged as an expense of the business. This commission or percentage shall, however, only be payable in the event that the Company shall earn and pay a dividend on its capital stock of at least six (6%) per cent. per annum.

Upon motion duly made, seconded and carried it was

Resolved, that no other officer or director of the Company shall receive any salary or compensation until the further order of the Board of Directors.

Upon motion duly made, seconded and carried the following amendment to the by-laws was unanimously adopted:

To add Section IVa of Miscellaneous reading as follows:

"The President or the treasurer and each of them is authorized to open any bank account, make any deposit, draw on the funds of the Company or transact any business with any bank, trust company, or bankers, and to sign, endorse, transfer, accept, make, execute or deliver any checks (including checks drawn to the individual order of either of said officers), warehouse receipts, bills of lading or bills of exchange, notes, drafts, acceptances and any other evidences of indebtedness or contracts, and no resolution of the Board of Directors shall be required as authority to either of said officers for any of said purposes."

There being no further business before the meeting the same thereupon adjourned.

MAX W. STÖHR,

Secretary.

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DEFENDANTS' EXHIBIT F.

Heyn & Covington,
60 Wall Street,
New York.

February 9, 1918.

Alien Property Custodian,
Division of Corporations,
16th & P Sts., N.W.,
Washington, D. C.

Attention of Judge J. Davis Brodhead and Mr. Andrew B. Duvall.

Botany Worsted Mills.

Stoehr & Sons, Inc.

GENTLEMEN:

At the conclusion of our conferences last Wednesday, February 6th, 1918, it was arranged that we put in written and summary form the various facts and statements made and hereby take pleasure in doing so.

As to Where the Control of These Companies Is.

As will be pointed out hereafter more in detail and as stated by us in our various conferences, considerably more than a majority control of these companies is in alien enemies under the act. The exact figures and stockholdings are stated more at length below.

Botany Worsted Mills of Passaic, N. J.

The Botany Worsted Mills was organized in 1889 under the laws of the State of New Jersey. It was founded by Mr. Eduard Stoehr of Leipzig, Germany, who is the head of the Stoehr family. He was also the founder of Stoehr & Co., a German corporation, which had been organized in 1880 and was engaged in Leipzig, Germany, in the manufacture of yarns and textile goods.

By-laws and Certificate of Incorporation.

We submit herewith a certificate of incorporation of the Botany Worsted Mills; also a copy of its by-laws which have been substantially in this form since its organization, with various amendments as to details, the last amendment having been made in 1913.

Capital Stock of Botany Worsted Mills.

Present amount \$3,600,000., all common stock, consisting of 36,000 shares; par value \$100. each. There have been various in-

creases of the original capital stock (which was \$1,100,000) since the organization in 1889, the last increase to the present amount having taken place in 1908.

418 Botany Worsted Mills is engaged in the manufacture of worsted woolen and other yarn and textile goods. Its plant is situated in Passaic, New Jersey and the Company has about 6,500 employees.

Number of Directors.

The by-laws provide that the number of directors shall not be less than seven nor more than eleven (by-laws, Article V, par. 2). The number of directors for any year is determined by the stockholders at their annual meeting (by-laws, Article V, par. 2). At the March, 1917 meeting they determined that there should be 10 directors. At the present time there are eight directors, whose names, residences, positions which they now occupy in the Company and the length of time of their connection with the Company are as follows:

Present Board of Directors (8 Directors, with 2 Vacancies).

Thomas Prehn, of Passaic, New Jersey, president, connected with the Company since 1889.

Hans E. Stochr, of New York City, treasurer, connected with the Company since 1902.

Ferdinand Kuhn, of Bernardsville, New Jersey, vice president, connected with the Company since 1891.

Geo. E. Roehlig, of Passaic, New Jersey, superintendent and vice treasurer, connected with the Company since 1889.

Max W. Stochr, of Passaic, New Jersey, secretary, connected with the Company since 1903.

Alfred de Liagre, of New York City, executive head of New York office and of the general sales department, connected with the Company since 1903.

Otto Kuhn, of Passaic, New Jersey, head of the woolen department, connected with the Company since 1905.

Camille Mehl, of Passaic, New Jersey, head of the yarn department, connected with the Company since 1915.

Unusual Nature of the Directorship of This Company.

The nature of the directorship of the Company has from the date of its organization been exceptional and different from that of most American companies in that this Company's Directors are actively engaged in the business and occupy responsible positions as officers and heads of departments. This has been the policy of the

419 Company from the date of its organization, it being the purpose of the founder, Mr. Eduard Stochr, that the directors should be real directors actually and personally interested in the business and giving their time and attention to it. The reward of

the directors for the success of their work was to be accordingly. It will be noted that the directors in accordance with the provision of the by-laws receive as their compensation a sum equal to 32% of the profits after deducting a 6% dividend to the stockholders and 5% for reserve (Article 21, par. B, page 15). This provision of the by-laws has been in force with immaterial variations from the date of the organization of the Company in 1889. The variations relate to the percentage which was 25%, later 40% and then 32%.

It will be noted that there are now two vacancies in the Board. At the annual meeting in March, 1917, ten directors were elected, being the gentlemen above mentioned and Eduard Stochr of Leipzig, Germany, and Geo. Stochr, of Leipzig, Germany. In the spring of 1917 after the declaration of war, the Board pursuant to Article V, par. 6 of the by-laws, declared two directorships vacant because of the disability of Eduard Stochr and Geo. Stochr, due to the state of war and said vacancies have not been filled.

It will also be noted that all of the present directors and officers are residents of the United States.

Annual Meeting of Botany.

The annual meeting of the stockholders of the Company is held on the third Tuesday of March (Article XIII, par. 1 of the by-laws), the next annual meeting taking place on March 19, 1918.

Stochr & Sons, Inc., New York City.

This is a New York corporation, organized in February, 1917, which is the successor to Stochr & Sons, a partnership in New York City, which consisted of Eduard Stochr, of Leipzig, Germany, and his three sons, H. E. Stochr, of New York City, M. W. Stochr, of Passaic, New Jersey, and Geo. Stochr, of Leipzig, Germany.

Certificate of Incorporation and By-laws.

A copy of the certificate of incorporation and of the by-laws of this Company are submitted herewith.

Capital Stock of Stochr & Sons, Inc.

420 Amount \$250,000, consisting of 2,500 shares, par value \$100 each.

The business of the Company—like that of its predecessor, the partnership of Stochr & Sons—is dealing in wool; part of its funds were used to help finance the operations of Botany and it also made investments in other American enterprises.

The immediate occasion for the organization of the corporation in February, 1917, was this: It was assumed that if there was a declaration of war between the United States and Germany, the partnership would probably have to cease, being dissolved by reason of the alien enemy character of Eduard Stochr, the father, and Geo.

Stoehr, the brother, the results of such dissolution being of course obviously unfortunate and conceivably disastrous.

The partners retained the same proportional interest in the corporation as their interest in the partnership, namely, Eduard Stoehr, the father, 1,875 shares, Geo. Stoehr, the brother, 222.21 shares being represented by trust certificates held by M. W. Stoehr for his father and brother)—in other words somewhat more than 4/5ths interest in parties resident in Germany.

Officers and Directors of Stoehr & Sons, Inc.

The certificate of incorporation and by-laws of the company provide for four directors. They are as follows:

Hans E. Stoehr, President,
Geo. E. Roehlig, Vice President,
Max W. Stoehr, Secretary and Treasurer,
Alfred de Liagre, Asst. Secretary and Asst. Treasurer.

It will be noted that these directors and officers are the same gentlemen mentioned above as directors and officers etc. of Botany Worsted Mills and that all of them are residents of the United States.

As has been pointed out, the founder of the Botany Worsted Mills was Eduard Stoehr. As he is advanced in age (being 72 years) most of the active work during the past years has devolved on his sons. In this connection it may be stated generally that Eduard Stoehr, the father, and Geo. Stoehr, the brother, were in charge of the Stoehr interests in Germany, and H. E. Stoehr and M. W. Stoehr of the interests in the United States. H. E. Stoehr represented his father and also Stoehr & Company, the Leipzig corporation, in this country.

421 Stoehr & Co., the Leipzig corporation, is a German stock company with its plant near Leipzig, Germany. Eduard Stoehr occupied a position similar to that of a chairman of the Board of Directors and Geo. Stoehr the position of Chief executive officer similar to president.

In February, 1917, the Board of Directors of Stoehr & Co. consisted of five members, viz: Eduard Stoehr, Hans E. Stoehr, Dr. Essenthal, Paul Gulden and Carl Beckmann.

Details as to Stock Control of Botany Worsted Mills.

The following will show the stockholdings in Botany Worsted Mills:

Shares of 84 Alien Enemy Stockholders referred to in the list report made to the Alien Property Custodian by Botany Worsted Mills, Form No. 101, report No. 5263 (see typewritten list, Schedule 2, showing 10,700 shares in names of alien enemy stockholders from which are to be deducted 1,205 shares referred to as having been purchased and paid for in 1916 by stockholders resident in U. S.)

These 1,205 shares were bought and paid for in 1916 by stockholders residents in the United States. But on account of interrupted communication the particulars as to the numbers of the certificates and the names of stockholders are incomplete (see report No. 5263, last page of Schedule 2).

The above mentioned 9,495 shares include 2,900 shares of George Hirsch, of Gera, Germany, standing in the name of Thomas Prehn (see report made by Thomas Prehn to the Alien Property Custodian. The report number and trust number of this report we do not know).

The above 9,495 shares also include 1,400 shares of Friedrich Arnold, of Greiz, Germany, standing in the name of Thomas Prehn. (see report by Thomas Prehn, No. 3052, trust No. 468).

Shares referred to in report No. 5263 (see last paragraph of typewritten list of Schedule 2, and also report No. 1869, trust No. 4017, Schedule 12, and a copy of contract annexed thereto. See also Schedule 2, last paragraph and Schedule 4 of report No. 5263). These shares were in the name of H. E. Stoechr and M. W. Stoechr, as trustees for said Stoechr & Co., the Leipzig corporation, the beneficial interest being in Stoechr & Co.

14,900

Regarding the contract for the purchase of said 14,900 shares by Stoechr & Sons Inc., from Stoechr & Co., of Leipzig, Germany, it has been fully explained that the control of Botany might be imperiled by a state of war, because the voting right on stock of alien enemies or in which alien enemies had the beneficial interests (as was the case with said 14,900 shares) was doubtful under the decisions of the courts, and if deprived of the voting right, the control of Botany might be lost. This contract was made with reference to the control of Botany as between its stockholders and had of course no reference to the status of such control so far as the Alien Property Custodian is concerned. Such status is not affected whether such shares are in Stoechr & Co. the Leipzig corporation or in Stoechr & Sons Inc. the New York corporation. As we also stated verbally there have been no resolutions or other corporate action by Stoechr & Co., the Leipzig corporation, in confirmation of this transaction.

Additional shares belonging to Stoechr & Sons Inc. the New York corporation.....
Other stockholders in the United States, including the 1,205 shares referred to above.....

5,685

5,920

Total stock of Botany..... 36,000

To summarize: While Botany is managed in this country, considerably more than a majority of its stock is controlled by alien

enemy interests within the meaning of the Alien Enemy Act; the total of the stock thus controlled (directly and indirectly) being 10,000 shares.

In accordance with the suggestion of Judge Brodhead and Mr. Duvall, we have stated in the foregoing letter the substance of the information verbally stated by us and contained in the reports made to the Alien Property Custodian. Of course, if any further information is desired we shall be glad to furnish it.

As to Further Conference.

We refer to the suggestion made by Judge Brodhead at our last interview regarding a future conference and shall be pleased to hear from you as to what date will be convenient to your office.

As to the Executive Committee.

In addition to the foregoing may we take the liberty of calling your attention to Article XXIII of the bylaws of Botany (last page)

423 which provides for an executive committee? Through this committee effective control may be exercised over the affairs of Botany. The number of its members could, if desired, be reduced to three and its powers extended and such other appropriate restrictions adopted as may be deemed advisable.

Yours very truly,

(Sgd.)

HEYNS & COWINGTON,

Counsel.

Enclosures 4.

Alien Property Custodian. Received Feb. 11, 1918. Noted
Date —, Ans'd. —, Date —, Report No. —,
Trust No. —.

424 DEFENDANTS' EXHIBIT G

was a carbon copy from the office of Heyns & Cowington of Plaintiff's Exhibit F with the following original signatures at the foot thereof:

"The foregoing approved.

BOTANY WORSTED MILLS.
By HANS E. STOEHR,
Treas.
STOEHR & SONS, INC.,
By HANS E. STOEHR,
Pres.

Defendants' Exhibit G contained the receipt of the New York Postmaster in the customary form of a registered letter enclosing the original of Defendants' Exhibit F, and also the registered return receipt from the Alien Property Custodian reading as follows:

Alien Property Custodian. Received Feb. 11, 1918. Noted
 ———. Date ———. Ansd. ———. Date ———. Report No. ———.
 Trust No. ———.

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DEFENDANTS' EXHIBIT H.

Stoehr & Sons, Inc.,
 200 Fifth Avenue,
 New York City.

February 5, 1918.

Cable: Stoehrsons, New York.

Herbert A. Heyn, Esq.,
 Hotel Raleigh,
 Washington, D. C.

DEAR SIR:

I herewith wish to state that the majority of the stock of the Botany Worsted Mills, Passaic, N. J., and of Stoehr & Sons Inc., New York, is held by parties who are "Alien Enemies" under the "Trading with the Enemy Act".

This information is given by me as Treasurer of the Botany Worsted Mills, and as President of Stoehr & Sons Inc.

Yours very truly,
 (Sgd.)

HANS E. STOEHR.

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DEFENDANT'S EXHIBIT I.

No. 2.

357.14/100 shares.

Trust Receipt or Certificate.

Stoehr & Sons. Inc.

This is to certify that as hereinafter provided Hans E. Stoehr will be entitled to receive a Certificate or Certificates for Three Hundred & fifty-seven & 14/100 fully paid shares of the par value of One hundred dollars each, in Common Stock of Stoehr & Sons, Inc., on February 19, 1922, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of shares of such Common Stock standing in their names. And until the 19th day of February, 1922, the Voting Trustees shall possess and be entitled to exercise all rights of every name and nature, including the right to vote in respect of any and all such stock; it being expressly stipulated that no voting right passes to the holder hereof by or under this Certificate, or by or under any agreement, express or implied.

This Certificate is issued pursuant to the terms of an agreement in writing, dated the 19th day of February, 1917, and entered into between all stockholders of said Company and said Voting Trustees.

This Certificate is transferable only on the books which shall be kept for that purpose by said Voting Trustees, by the registered

holder, either in person or by attorney, duly authorized, according to rules which shall be established for that purpose by said voting Trustees, and on surrender hereof and until so transferred, the said Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that the delivery of such Certificates hereunder shall not be made without the surrender hereof.

This Certificate is not valid unless signed by the Voting Trustees.

In witness whereof said Voting Trustees have caused this Certificate to be signed this 19th day February, 1917.

HANS E. STOEHR,
MAX W. STÖHR,
GEORG G. RÖHLIG,
Voting Trustees.

Endorsed.

For value received I hereby sell, assign and transfer unto ———, all — right, title and interest represented by the within Stock Trust Certificate, and do hereby irrevocably constitute and appoint ———, Attorney to transfer the said Certificate on the books of the within named Voting Trustees, with full power of substitution in the premises.

Dated, the 13th day of July, 1917.

HANS E. STOEHR. [L. S.]

In the presence of:

MAX W. STÖHR.

\$2.40 revenue stamps cancelled.

NOTICE.—The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement or any change whatever.

427 DEFENDANTS' EXHIBIT J

consisted of the by-laws of the Botany Worsted Mills as amended, which were in force during the period covered by the transactions in this case and down to the time of the adoption, July 30, 1918, of the amended by-laws of the Botany Worsted Mills, Defendants' Exhibit A-1, and consisted of 23 articles. Article 1 fixed the name of the company; Article 2 the object of the company. Article 3 its place of business. Article 4 fixed the capital stock at \$3,600,000 divided into 36,000 shares of the par value of \$100 each to be issued in certificates of five (5) shares each. Article 5 contained seven paragraphs defining the duties of officers. Article 6 defined the duties of the President and Vice-Presidents. Article 7 prescribed the duties of the Treasurer and Vice-Treasurer and provided that the Treasurer should countersign all certificates of stock and have the care and custody of all the funds of the company and should deposit the same

in such bank or banks as he and the President might select, and was empowered "to buy and sell material and merchandise and to take general charge of the business; to sign all checks, drafts, notes and orders for the payment of money." Article 8 prescribed the duties of the Superintendent. Article 9 prescribed the duties of the Secretary. Article 10 fixed the number of the directors and prescribed the duties of directors. Article 11 fixed the business year to commence on the first day of December in each year and end on the 30th day of November of the following year. Article 12 related to directors and their meetings, both regular and special. Article 13 was as follows:

"Article XIII.

Meetings of Stockholders.

"Par. 1. An annual meeting of the Stockholders of the Company shall be held on the third Tuesday of March of each year at 12 o'clock noon for the election of new Directors and other business.

"Par. 2. The President, or either of the Vice-Presidents, or in their absence a chairman elected by a majority vote of the stockholders present or represented by proxy, shall preside at these meetings. A Judge of election shall be chosen by a majority vote of those present, who shall hold the election; but no person who is a candidate for the office of Director shall act as judge of election for Directors of the Company; and in case any person so acting at or conducting any election shall be elected a director, his election shall be void, and it shall not be lawful for Directors for the time being to appoint such person to the office of Director of the Company within 12 months next succeeding such election.

"Par. 3. A special meeting of the stockholders shall be called by the President or either of the Vice-Presidents at the request of the Treasurer or Vice-Treasurer or of a majority of the Board of Directors, or of a majority in interest of the stockholders signed by such stockholders or their legal representatives and stating the object of the proposed meeting. The Secretary shall give or mail at least four weeks' written notice to all stockholders or their duly appointed representatives at their residences as they appear on the books of the Company, and such notice shall state the business for which the meeting was called, and no other business than as stated therein shall be transacted at such meeting.

"Par. 4. The poll at every election shall be opened between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon, and shall continue open at least one hour by daylight, and shall close before 9 o'clock in the evening."

Article 14 related to the place of meetings of stockholders
428 and of directors. Article 15 fixed the quorum of stockholders for the alteration or addition to the by-laws by the stockholders. Article 16 related to the repeal, alteration, amendment or

addition to the by-laws by the stockholders and the board of directors. Article 17 was as follows:

"Article XVII.

Stockholders and Elections.

"Par. 1. Each stockholder shall be entitled to a certificate of his stock, but only in blocks of five shares under the seal of the corporation, signed by its President or either of the Vice-Presidents, and countersigned by its Treasurer. Each share of stock represented at any meeting of the stockholders shall entitle the holder thereof registered on the books of the Company to one vote.

"Par. 2. No stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any installments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting.

"Par. 3. At all meetings absent stockholders may vote by proxy authorized by a writing executed by the owner of shares. The President or other chairman of the meeting, and in case of an election, the judge of election, shall judge the sufficiency of the powers of attorney produced, but no proxy shall be voted on, allowed or received for more than three years from its date.

"Proxies shall only be given to shareholders of the Company.

"No share of stock shall be voted on at an election, which has been transferred on the books of the Company within twenty days preceding such election.

"Par. 4. Every person holding stock as executor, administrator, guardian, or trustee, shall represent the stock in his hands at all meetings of the Company and may vote accordingly as a stockholder; and every person who shall pledge his stock as collateral security, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder.

"Par. 5. The Board of Directors shall produce at the time and place of election during the whole time while such election shall be open, a full, true and complete list of all the stockholders of the company entitled to vote at such election, with the number of shares held by each; which list shall be arranged in alphabetical order and subject to the inspection of any stockholder who may be present at such election; and upon the neglect or refusal of said Directors or managers to produce said list at any election of the Company, they shall be ineligible to any office at such election."

Article 18 was as follows:

Article XVIII.

Transfer of Shares.

"Transfer of shares, so as to entitle the holder to be recognized as owner by the Company, shall only be made upon the books of the Company by the holder or owner in person or by power of attorney. For the convenience of the European shareholders such transfer may be accomplished in the following manner: The certificates may be deposited, properly endorsed, with the Vice-Treasurer at Leipzig, or with any Director resident at Leipzig, who is to certify such transfer or assignment to the Treasurer at the principal office of the Company and the Treasurer shall thereupon note such transfer upon the share-book of the company and advise the Vice-Treasurer or such Director at Leipzig of the transfer so made. It shall be the duty of the Vice-Treasurer or such Director resident at Leipzig to retain the certificate deposited with him, until he shall be advised by the Treasurer of the completed transfer."

429 Article 19 related to the substitution of certificates that had been lost, stolen or destroyed. Article 20 related to dividends. Article 21 related to the distribution of the profits of the Company. Article 22 provided for the seal of the company. Article 23 provided for an Executive Committee and fixed its quorum and powers.

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DEFENDANT'S EXHIBIT K.

For Directors of the Botany Worsted Mills.

April 2, 1918.

Mr. Thomas Prehn.

Mr. Ferdinand Kuhn.

Mr. Georg Röhlig.

Mr. Max W. Stoehr.

Max W. Stoehr, Proxy for Stoehr & Sons, Inc., 20,550 sh.

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DEFENDANTS' EXHIBIT L.

Division of Corporations.

January 30th, 1918.

Re Trust No. 4017—Report No. 1869.
“ “ 12118— “ “ 5263.

Messrs. Stoehr & Sons, Incorporated,
#200 Fifth Avenue,
New York City.

GENTLEMEN:

The reports made by your Company pursuant to the provisions of Section 7 (a) of the "Trading with the enemy act" as well as the several reports made by the Botany Worsted Mills and Mr. M. W. Stoehr are now receiving our consideration.

Before taking further steps in connection with these reports, we desire to secure additional information concerning the matters hereinafter referred to, to wit:

1. The Report of Stoehr & Sons, Inc., of New York makes reference to a certain contract dated February 20th, 1917, wherein Stoehr & Company, of Leipzig, Germany, agree to sell to Stoehr & Sons, Inc., of New York, 14,900 shares of the capital stock of the Botany Worsted Mills, and the paper writing purporting to be a copy of said contract is attached to and made a part of said report.

In connection with this report, we request that you submit for our inspection and furnish full information on the following:

(a). The certificate of incorporation and by-laws of Stoehr & Sons, Inc., of New York.

(b). Copy of the certificate of charter, the by-laws, list of officers and directors of Stoehr & Company, of Leipzig, Germany.

(c). Certified copy of the minutes of the action taken by Stoehr & Company, of Leipzig, Germany, with reference to the sale of the 14,900 shares of capital stock of the Botany Worsted Mills to Stoehr & Sons, Inc., of New York; and any paper writing authorizing the execution of said contract by H. E. Stoehr on behalf of Stoehr & Company, of Leipzig, Germany.

432 (d). The powers of attorney or other written authority whereby on February 3rd, 1917, H. E. Stoehr and M. W. Stoehr held respectively 10,000 shares and 4,900 shares of the capital stock of the Botany Worsted Mills, as Trustee, for Stoehr & Company, of Leipzig, Germany. Also the written authority, if any, revoking the powers of attorney to said H. E. Stoehr and M. W. Stoehr.

2. The report of the Botany Worsted Mills giving the list of stockholders states that 1,205 shares of the total 10,710 shares now registered in the names of enemies residing in Germany and Austria were bought in the year 1916 by stockholders resident in the United States; that the Company has proof said shares were actually bought and paid for by said resident stockholders, although none of the certificates therefor are in this country and the Company cannot state from which of the resident stockholders the shares were purchased. We desire to be furnished with satisfactory proof respecting the transfer of title to said 1,205 shares of stock and the names of the alleged purchasers thereof. We also wish to inspect the certificate of incorporation and by-laws of the Botany Worsted Mills, and be furnished with a list of the present officers and directors.

3. The report of the Botany Worsted Mills "unpaid dividend accounts" sets forth that various sums of money representing unpaid dividends have been credited on the books of the Company to various accounts. We request that you furnish us with certified copies of the minutes of the Botany Worsted Mills covering the various declarations of dividends from January, 1916 to date and showing the amount of each dividend.

It is important that we secure the information embodied herein at an early date, and we would suggest that it would not only facilitate the handling of the cases, but would result in a much better understanding by all parties if the proper officers of your Company and the Botany Worsted Mills could arrange to visit Washington and confer with us on Monday or Tuesday of next week.

433 In further communications, please refer to the Division of Corporations, Trust No. 4017, Report No. 1869; also Trust No. 12118 et al. Report No. 5263.

Very truly yours,

(Signed)

RALPH STONE,
Director Bureau of Trusts.

A. B. D.: M. T. S.

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DEFENDANTS' EXHIBIT M.

(Page 1 of Confirmation of Transfer Book.)

Plagwitz-Leipzig, 13 Febr., 1890.

To the Treasurer of the Botany Worsted Mills, Passaic, N. J.

DEAR SIR:

I hereby certify that certificate No. 1801 representing shares Nos. 09001-09005 of the capital stock of the Botany Worsted Mills has been deposited with me, properly endorsed to Messrs. Gustave Ebell & Co. of Berlin with the request to cause the same to be transferred upon the books of the Company to the above-named endorsee, and that Mr. Oscar Dressler has been appointed by the owner of said

shares attorney to transfer the said shares on the books of the Company, with full power of substitution.

Yours truly,
(Sgd.)

E. STÖHR,
Vice-Treasurer.

(Stub:) Confirmation of Transfer. Date March 18th, '90.
Certif. No. 1801. Share No. 09001-09005. To Gustav Ebell & Co.,
Berlin.

435

DEFENDANTS' EXHIBIT N.

Defendants' Exhibit N consisted of four pages out of the Botany Worsted Mills record of transfers of shares. The stock of the Botany Worsted Mills was under the old by-laws, Defendants' Exhibit J, issued only in certificates of five shares each. Each five-share certificate had a corresponding page in the record of transfer book (Defendants' Exhibit N). Defendants' Exhibit N was made up as follows:

"Five Shares of \$100 Each,

Equal to

\$500

of the Capital Stock of the Botany Worsted Mills, Passaic, N. J.,

Incorporated under the Laws of the State of New Jersey.

Certificate No. —. Share- Nos. —. To — — —,

Owned by — — —,

Transfers.

Transferred to — — —, by deposit of certificate with — — —,
Passaic, N. J., — — —, 190—.

— — —,
Treas."

On each page of said record of transfer there were eleven other forms of certificate of transfer similar to the foregoing.

DEFENDANTS' EXHIBIT O.

(Page 236 of Confirmation of Transfer Book.)

236.

Plagwitz-Leipzig, January 15, 1915.

To the Treasurer of the Botany Worsted Mills,
Passaic, N. J.

DEAR SIR:

I hereby certify that certificate No. 51-1050, 3441-3500, 4061-5000 representing shares Nos. 251-5250, 17201-17500, 20301-25000 of the Capital Stock of the Botany Worsted Mills has been deposited with me, properly endorsed to Mr. Hans E. Stoehr as trustee of New York with the request to cause the same to be transferred upon the books of the Company to the above-named endorsee.

Yours truly,
(Sgd.)GEORG STÖHR,
Vice-President.

(Stub:) 236. Confirmation of Transfer. Date February 15, 1915. Certif. No. 51-1050, 3441-3500, 4061-5000. Share- No. 251-5250, 17201-17500, 20301-25000. To Mr. Hans E. Stoehr, as trustee. New York City.

DEFENDANTS' EXHIBIT P.

(Page 238 of Confirmation of Transfer Book.)

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Plagwitz-Leipzig, February 1st, 1915.

To the Treasurer of the Botany Worsted Mills,
Passaic, N. J.

DEAR SIR:

I hereby certify that certificate No. 1051-1400, 2004-2017, 2041-2060, 2151-2171, 2861-2884, 2890-2898, 3161-3260, 5251-5369, 5389-5411, 5451-5470 representing shares Nos. 5251-7000, 10016-10085, 10201-10300, 10751-10855, 14301-14420, 14446-14490, 15801-16300, 26251-26845, 26941-27055, 27251-28750 of the Capital Stock of the Botan- Worsted Mills has been deposited with me, properly endorsed to Mr. Max W. Stoehr as Trustee, of Passaic, N. J.,

with the request to cause the same to be transferred upon the books of the Company to the above-named endorsee.

Yours truly,

(Sgd.)

GEORG STÖHR,

Vice-President.

(Stub:) 238. Confirmation of Transfer. Date February 26, 1915. Certif. No. 1051-1400, 2004-2017, 2041-2060, 2151-2171, 2861-2884, 2890-2898, 3161-3260, 5251-5369, 5389-5411, 5451-5750. Share- No. 5251-7000, 10016-10085, 10201-10300, 10751-10855, 14301-14420, 14446-14490, 15001-16300, 26251-26845, 26941-27055, 27251-28750. To Mr. Max W. Stöhr as trustee, Passaic, N. J.

(Here follows Defendants' Exhibit Q. marked page 438.)

FOLD-OUTS ARE TOO LARGE TO BE FILMED

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DEFENDANTS' EXHIBIT R.

Dividends Paid to Stoehr & Sons, New York.

1,120 coupons No. 52 due April 15, 1916, credited in Account Current	\$78,400.00
1,120 coupons No. 53 due September 15, 1916, credited in Account Current under date of September 15, 1916..	\$16,800.00

Out of the above 1,120 coupons, 258 coupons were delivered in Passaic and 862 coupons were delivered in Germany, supposed to have been cancelled before a Notary Public.

Dividends Paid to Stoehr & Sons, Inc., New York.

258 coupons No. 54 delivered in Passaic and credited in Regular Account under date of April 15, 1917.....	\$18,060.00
258 coupons No. 55 due September 15, 1917, paid in cash against delivery of coupons.....	\$38,070.00
880 coupons No. 54 due April 15, 1917, credited in Special Account under date of April 15, 1917, Coupons still in Germany.....	\$61,600.00
880 coupons No. 55 due September 15, 1917, credited in Special Account under date of September 15, 1917, Coupons still in Germany.....	\$13,200.00

The value of said 880 coupons Nos. 54 and 55, aggregating \$74,800.00, was paid with accrued interest to Stoehr & Sons Inc. on November 22, 1918.

440

DEFENDANTS' EX. S.

Transfers of 5,690 Shares of Botany Worsted Mills Stock Standing in the Name of Stoehr & Sons, Inc.

4,180 shares were transferred from Eduard Stoehr to Stoehr & Sons, New York, by deposit of certificate with Treasurer as follows:

850 Shares—

Certificates No. 3761-3810— 250 shares.
 “ “ 6001-6120— 600 “

Total 850 shares on December 30, 1913; and

Certificates	No.				
		1-50	—	250	shares.
“	“	1431-1500	—	350	“
“	“	1516-1520	—	25	“
“	“	1626	—	5	“
“	“	1634-1637	—	20	“
“	“	1651-1659	—	45	“
“	“	1790-1800	—	55	“
“	“	1851-1890	—	200	“
“	“	2018-2023	—	30	“
“	“	2172-2180	—	45	“
“	“	3157-3160	—	20	“
“	“	3261-3340	—	400	“
“	“	3361-3370	—	50	“
“	“	3371-3380	—	50	“
“	“	3701-3760	—	300	“
“	“	3538-3560	—	115	“
“	“	3851-3860	—	50	“
“	“	3881-3919	—	195	“
“	“	5001-5142	—	710	“
“	“	5156-5162	—	35	“
“	“	5370-5376	—	35	“
“	“	5430-5450	—	105	“
“	“	5874	—	5	“
“	“	5922-5966	—	225	“
“	“	7178-7179	—	10	“

Total 3330 “ under date of Jan. 30, 1914.

Said 4,180 shares were transferred on February 20, 1917, to Stoehr & Sons Inc., as follows:

By deposit of Certificates with Georg Stoehr, Director . .	3,325	shares
By deposit of Certificate with Treasurer	250	shares
By deposit of Certificate with	605	shares

Total 4,180 shares

441 500 shares were transferred from Georg Stoehr on January 30, 1914, to Stoehr & Sons, New York, by deposit of Certificate with Treasurer.

Certificates	No.	1401-1430—	150	shares.
"	"	1731 —	5	"
"	"	1751-1760—	50	"
"	"	1831-1836—	30	"
"	"	3341-3349—	45	"
"	"	3421-3426—	30	"
"	"	3602-3603—	10	"
"	"	3606-3615—	50	"
"	"	3695-3700—	30	"
"	"	5193-5200—	40	"
"	"	5967-5968—	10	"
"	"	6619-6624—	30	"
"	"	6981-6984—	20	"

Total..... 500 shares.

All of said 500 shares were transferred on February 20, 1917, to Stoehr & Sons Inc. by deposit of Certificates with Georg Stoehr, Director.

810 shares were transferred from Hans E. Stoehr to Stoehr & Sons, New York, as follows:

800 shares—

Certificates	No.	3820 —	5	shares.
"	"	3946-3960—	75	"
"	"	6536-6575—	200	"
"	"	5984-5996—	65	"
"	"	1541-1545—	25	"
"	"	1550 —	5	"
"	"	1707-1725—	95	"
"	"	1934-1940—	35	"
"	"	3041-3050—	50	"
"	"	3531-3537—	35	"
"	"	4048-4050—	15	"
"	"	6514 —	5	"
"	"	6576-6607—	160	"
"	"	7108-7109—	10	"
"	"	7182-7185—	20	"

Total..... 800 shares—By deposit of Certificate with Treasurer on January 30, 1914.

Certificate No. 7180-7181—10 shares were transferred on March 18, 1914, by deposit of Certificate with Treasurer.

Out of the said 810 shares, 340 shares were transferred on February 20, 1917, to Stoehr & Sons Inc. by deposit of Certificate with Treasurer; 465 shares were transferred on February 20, 1917, to

Stoehr & Sons Inc. by deposit of certificate with Georg Stoehr, Director; 5 shares No. 3820 were transferred on February 27, 1917, to Herbert A. Heyn by deposit of certificate with Treasurer.

442 95 shares were transferred from Max W. Stoehr to Stoehr & Sons, New York, on January 30, 1914, by deposit of certificate with Treasurer—

Certificate No.	6139-6148—	50	shares.
"	" 6526-6534—	45	"
"	" 6526-6534—	45	"
Total.....		95	shares.

Said shares were transferred on February 20, 1917, to Stoehr & Sons, Inc. by deposit of certificates with Treasurer.

15 shares were transferred from Allgemeine Deutsche Credit Anstalt to Stoehr & Sons, New York, on April 17, 1914, by deposit of certificates with Georg Stoehr, Director, No. 6992-6994. Said shares were transferred on February 20, 1917, to Stoehr & Sons Inc. by deposit of Certificates with Georg Stoehr, Director.

90 shares—

Certificates No.	1521-1530—	50	shares.
"	" 1572-1573—	10	"
"	" 3091-3092—	10	"
"	" 5872 —	5	"
"	" 7167-7169—	15	"

Total..... 50 shares were transferred from Stadtgemeinde Augsburg on January 24, 1916, to Stoehr & Sons by deposit of certificate with Georg Stoehr, Director. Said shares were transferred on February 20, 1917, to Stoehr & Sons Inc. by deposit of certificates with Georg Stoehr, Director.

DEFENDANTS' EXHIBIT T.

Dividends Paid on 14,900 Shares From February 20, 1917, to January 24, 1920.

Date declared payable.	Rate.	Amount.	To whom paid.	Date paid.
April 15, 1917....	14%	\$208,600.00	Credited to acct. Stoehr & Sons, Inc., Special, under date of Mar. 31, 1917.	
			Paid to A. Mitchell Palmer, A. P. C.....	April 25, 1918
Sept. 15, 1917....	3%	44,700.00	Credited to acct. Stoehr & Sons, Inc., Special, under date of Oct. 31, 1917.	
			Paid to A. Mitchell Palmer, A. P. C.....	April 25, 1918
June 28, 1918....	22%	327,800.00	Paid to People's Bank & Trust Co., Passaic, as depository for Alien Property Custodian	June 28, 1918
Sept. 15, 1918....	3%	44,700.00	Paid to People's Bank & Trust Co., Passaic, as depository for Alien Property Custodian	Sept. 16, 1918

April 15, 1919....	3%	44,700.00	Paid to People's Bank & Trust Co., Passaic, as de- positary for Alien Prop- erty Custodian	Sept. 23, 1919
Sept. 15, 1919....	3%	44,700.00	Paid to People's Bank & Trust Co., Passaic, as de- positary for Alien Prop- erty Custodian	Sept. 23, 1919
Oct. 1, 1919....	19%	283,100.00	Paid to People's Bank & Trust Co., Passaic, as de- positary for Alien Prop- erty Custodian	Oct. 6, 1919
Total		<u>\$998,300.00</u>		

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DEFENDANTS' EXHIBIT U.

Book Value of Capital Stock of Botany Worsted Mills, Passaic, N. J.

Date.	Book value per share.	Book value 14,900 shares.		
Feb. 20/19...	348,963.79	5,199,559.58	One fifth of \$4,737,937.46 equals.....	\$947,587.49
as of Nov. 30/17.			Add Dividends for said 14,900 shares from Feb. 20, 1917 to Feb. 20, 1918, 17%.....	253,300.00
			Total Feb. 20, 1918.....	<u>\$1,200,887.49</u>
Feb. 20/19...	348,963.73	5,199,559.58	One fifth of \$5,199,559.58 equals.....	1,039,911.91
			Add four-fifths of dividends of \$372,500 (25%) paid on said 14,900 shares from Feb. 20/18 to Feb. 20/19	<u>298,000.00</u>
			Total Feb. 20, 1919.....	<u>\$1,337,911.91</u>

Referring to Sub-Division C of Paragraph 2 of agreement between Kammarnspinnerei Stoehr & Co. and Stoehr & Sons, Inc., dated Feb. 20, 1917 it states that "in arriving at the amount of each installment for each of said years the net worth of the hard assets of the Botany Worsted Mills after deducting the total liabilities shall be taken as the basis for the computation of the value per share and no allowance or increase shall be made on such installment for good will."

Neither Mr. Karl Zimmermann, the accountant of the Company, nor I myself know what said provision means as we do not know the meaning of the words "the net worth of the hard assets of the Botany Worsted Mills;" neither one of us ever heard that expression used and the phrase "hard assets" was never used in the bookkeeping of the Botany Worsted Mills.

In computing the book value of said 14,900 shares, we have taken the sum of the capital stock, amount \$3,600,000.00 to which was added the paid in surplus, amount \$1,050,000.00, and the surplus from operations for each year and divided such aggregate sum by 36,000, the total number of shares outstanding.

Said book value as of November 30, 1917 and November 30, 1918 may possibly be changed somewhat as the result of certain tax matters now pending in Washington, although the figures shown are in accordance with the books of the Company.

Directors.

March 17th, 1914.

Mr. Eduard Stoehr.
 " Antonio Knauth.
 " Hans E. Stoehr.
 " Ferdinand Kuhn.
 " Thomas Prehn.
 " George Roehlig.
 " George Stoehr.
 " C. H. Wolfrum.

March 16th, 1915.

Mr. Eduard Stoehr.
 " Antonio Knauth.
 " Hans E. Stoehr.
 " Ferdinand Kuhn.
 " Thomas Prehn.
 " Georg Roehlig.
 " Georg Stoehr.
 " C. H. Wolfrum.
 " Alfred de Liagre.
 " Otto Kuhn.
 " Max W. Stoehr.

December 21st, 1915.

Mr. Camill Mehl.

March 21st, 1916.

Mr. Eduard Stoehr.
 " Thomas Prehn.
 " Hans E. Stoehr.
 " Ferdinand Kuhn.
 " Georg Roehlig.
 " Georg Stoehr.
 " Alfred de Liagre.
 " Otto Kuhn.
 " Camill Mehl.
 " Max W. Stoehr.

Officers.

March 17th, 1914.

Mr. Eduard Stoehr, Pres.
 " Antonio Knauth, 1st Vice-Pres.
 " George Stoehr, 2nd Vice-Pres.
 " Ferdinand Kuhn, Treas.
 " Hans E. Stoehr, Vice-Treas.
 " George Roehlig, Supt.
 " Thomas Prehn, Sec.

March 16th, 1915.

Mr. Thomas Prehn, Pres.
 " Antonio Knauth, 1st Vice-Pres., died Dec. 3rd, 1915.
 " Ferdinand Kuhn, 2nd Vice-Pres.
 " Hans E. Stoehr, Treas.
 " Georg Roehlig, Vice-Treas. & Supt.
 " Max W. Stoehr, Sec.

March 21st, 1916.

Mr. Thomas Prehn, Pres.
 " Ferdinand Kuhn, Vice-Pres.
 " Hans E. Stoehr, Treas.
 " Georg Roehlig, Vice-Treas. & Supt.
 " Max W. Stoehr, Sec.

Directors.

March 20th, 1917.

Mr. Hans E. Stoehr.
 " Max W. Stoehr.
 " Thomas Prehn.
 " Georg Rochlig.
 " Ferdinand Kuhn.
 " Otto Kuhn.
 " Camill Mehl.
 " Alfred de Liagre.
 " Eduard Stoehr.
 " Georg Stoehr.

March 26th, 1918.

Mr. James N. Wallace.
 " Thomas J. Maloney.
 " Francis P. Garvan, resigned
 July 1st, 1918.
 " Andrew B. Duvall.
 " George T. Smith, did not act
 as Director.
 " H. C. McEldowney.
 " Horace C. Jones.

446 April 2nd, 1918.

Mr. Thomas Prehn.
 " Ferdinand Kuhn.
 " Max W. Stoehr, resigned
 Oct. 10th, 1918.
 " Georg Rochlig, died Oct.
 29th, 1918.

April 15th, 1918.

Mr. Thomas F. Martin.

August 20th, 1918.

Mr. Richard Stockton.

November 1st, 1918.

Mr. Herbert P. Howell.
 Mr. Wm. J. Hellmer.

Officers.

March 20th, 1917.

Mr. Thomas Prehn, Pres.
 " Ferdinand Kuhn, Vice-Pres.
 " Hans E. Stoehr, Treas.
 " Georg Rochlig, Vice-Treas. &
 Supt.
 " Max W. Stoehr, Sec.
 Eduard Stoehr and Georg
 Stoehr dropped from Board July
 1st, 1917.

April 2nd, 1918.

Mr. Thomas Prehn, Pres.; re-
 signed as Pres. August
 20th, 1918.
 Mr. Ferdinand Kuhn, Vice-Pres.
 Mr. Thomas J. Maloney, Treas.
 " Georg Rochlig, Vice-Treas. &
 Supt., died Oct. 29th, 1918.
 " Max W. Stoehr, Sec., resigned
 Oct. 10th, 1918.
 " Wm. J. Hellmer, Asst. Treas.

November 1st, 1918.

Mr. Wm. J. Hellmer, Sec.

*Directors.**Officers.*

March 7th, 1919.

Mr. James N. Wallace, Pres., re-
signed March 18th, 1919.

March 18th, 1919.

Mr. Andrew B. Duvall.
" Wm. H. Folwell.
" Wm. J. Hellmer.
" Herbert P. Howell.
" Horace C. Jones.
" Ferdinand Kuhn.
" Thomas J. Maloney.
" Thomas F. Martin.
" Thomas Prehn.
" Richard Stockton.
" James N. Wallace, resigned
March 18th, 1919.

March 27th, 1919.

March 27th, 1919.

Mr. Douglas I. McKay.

Mr. Ferdinand Kuhn, Pres.
" Horace C. Jones, Vice-Pres.
" Thomas J. Maloney, Treas.
" Wm. J. Hellmer, Sec. & Asst.
Treas.
" Carl Schlachter, Supt.

447

DEFENDANTS' EXHIBIT X.

Botany Worsted Mills,
Passaic, New Jersey,
February 3, 1918.

DEAR MR. HEYN:

I wish to thank you for the satisfactory message, which you gave me over the telephone, reporting about your interview at the Department of the Alien Property Custodian. I am sorry that the permit for my coming to Washington was not granted. It might have helped to straighten out any questions. At the same time the evidence and information, which you have, may be sufficient to enable you to bring this matter to a satisfactory conclusion.

Herewith I am enclosing another letter, containing the information asked for in regard to the holdings of stock in the Botany Worsted Mills, and Stoeck & Sons Inc. In addition I give you a list of the stockholders of the Botany Worsted Mills as follows:

Stoehr & Co.....	14,900	shares	
Hirsch & Arnold.....	4,100	"	
(s) Various German Stockholders..	6,400	"	
			25,400 shares
Stoehr & Sons.....	5,685	"	
Claimed by Prehn and others..	1,205	"	
Various Stockholders in U. S. A.	3,710	"	
			10,600 "
Total			36,000 "

448 I also enclose list of papers mailed to you under separate cover, by registered mail, special delivery.

I shall be at the New York Office all day tomorrow, Wednesday, Feb. 6th, in case you wish additional information.

With kindest regards to both Mr. Lenssen and yourself, I am

Sincerely yours,
(Sgd.)

HANS E. STOEHR.

2 Enclosures.

Herbert A. Heyn, Esq.,
Hotel Raleigh,
Washington, D. C.

Special delivery.

449 DEFENDANTS' EXHIBIT Y.

Botany Worsted Mills, Passaic, N. Y.

*Statement of the Number of Votes Cast at Stockholders' Meetings
as Shown by the Minutes from March 15, 1910, to May 28, 1919.*

Annual Meeting March 15, 1910

(at Which Directors Were Elected).

Total number of votes cast.....	25,725	(proxies at Mill)
Kaufmangarnspinnerei Stoehr & Co.		
voted in person.....	14,945	
Eduard Stoehr voted in person.....	4,185	

(x) Including about 1,000 shares of Australian stockholders.

Annual Meeting March 21, 1911

(at Which Directors Were Elected).

Total number of votes cast.....	23,675	(proxies at Mill)
Antonio Knauth voted as proxy for Kammgarnspinnerei Stoeck & Co.	14,910	
Hans E. Stoeck voted as proxy for Commerzienrat E. Stoeck.....	4,335	
Hans E. Stoeck voted in person..	720	

Annual Meeting March 19th, 1912

(at Which Directors Were Elected).

Total number of votes cast.....	29,025	(proxies at Mill)
Kammgarnspinnerei Stoeck & Co., A. G. represented by Georg Stoeck in person.....	14,910	
Hans E. Stoeck voted as proxy for Eduard Stoeck	4,185	
Hans E. Stoeck voted in person....	785	
Georg Stoeck voted in person.....	555	

Annual Meeting March 18, 1913

(at Which Directors Were Elected).

Total number of votes cast.....	27,240	(proxies at Mill)
Hans E. Stoeck voted as proxy for Kammgarnspinnerei Stoeck & Co., A. G.	14,910	
Hans E. Stoeck voted as proxy for Eduard Stoeck	4,185	
Hans E. Stoeck voted as proxy for Georg Stoeck	555	
Hans E. Stoeck voted in person....	785	
Max W. Stoeck voted in person....	100	

Annual Meeting March 17, 1914

(at Which Directors Were Elected).

Total number of votes cast.....	24,300	(proxies at Mill)
Stoeck & Sons voted in person.....	5,575	
Hans E. Stoeck voted as proxy for Kammgarnspinnerei Stoeck & Co., A. G.	14,910	

Annual Meeting March 16, 1915

(at Which Directors Were Elected).

Total number of votes cast.....	24,535	(proxies not found)
Stoehr & Sons voted in person.....	5,600	
A. G. represented by Georg Stoehr voted in person.....	5,000	
Kammgarnspinnerei Stoehr & Co. Hans E. Stoehr as Trustee voted in person	10,000	

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Annual Meeting March 21, 1916

(at Which Directors Were Elected).

Total number of votes cast.....	24,505	(proxies not found)
Stoehr & Sons voted in person	5,600	
Max W. Stoehr Trustee voted in person	4,900	
Hans E. Stoehr Trustee voted in person	10,000	

Annual Meeting March 20th, 1917

(at Which Directors Were Elected).

Total number of votes cast.....	28,865	(proxies not found)
Stoehr & Sons Inc. voted in person	20,585	

Annual Meeting March 19th, 1918

(at Which No Directors Were Elected)

Total number of shares represented	29,315	(proxies at Counsel's office)
Max W. Stoehr as proxy for Stoehr & Sons Inc.....	20,585	

Adjourned Annual Meeting March 26th, 1918 (at Which 7 Directors
Nominated by the Alien Property Custodian Were Elected).

Total number of votes cast.....	24,975	(proxies at Counsel's office)
Max W. Stoehr voted as proxy for Stoehr & Sons Inc.....	20,550	

Adjourned Annual Meeting April 2, 1918

(at Which 4 Directors Were Elected).

Total number of votes cast..... 24,975 (proxies at
Counsel's office)

Max W. Stoehr voted as proxy for
Stoehr & Sons Inc..... 20,550

Adjourned Meeting of Stockholders June 13, 1918 (for Approval
of Balance Sheet as of Nov. 30, 1917).

Total number of votes cast..... 35,740 (proxies at
Counsel's office)

Andrew B. Duvall voted as proxy for
A. Mitchell Palmer and People's
Bank & Trust Co. as depositary for
A. Mitchell Palmer..... 25,605

Max W. Stoehr voted as proxy for
Stoehr & Sons Inc..... 5,650

Special Meeting of Stockholders July 30, 1918 (to Approve By-laws).

Total number of votes cast..... 28,325 (proxies at
Counsel's office)

A. B. Duvall voted as proxy for A.
Mitchell Palmer, Alien Property
Custodian 25,605

Annual Meeting of Stockholders March 18th, 1919 (at Which 11
Directors Were Elected).

Total number of shares represented.. 29,315

Total number of votes cast..... 28,665 (proxies at
Counsel's office)

John Quinn and Andrew B. Duvall
voted as proxy for Francis P.
Garvan 25,615

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DEFENDANTS' EX. "Z."

Declaration of Trust.

Know all men by these presents that I, the undersigned, do hereby declare and certify that I hold the Two Hundred and twenty-three and twenty-one hundredths (223 & 21/100) shares of stock of Stoehr & Sons, Inc., a New York corporation, which are standing in my name and are evidenced by certificate No. 3 of said Company, dated February 19, 1917, in trust for the benefit of Georg Stoehr, who is the beneficial owner of the same and that said shares of stock are

standing in my name as a matter of convenience and that I myself have no interest in the same except as trustee.

I do further agree that I will at any time at the request of said Georg Stoehr endorse and transfer the said shares to him or his nominees.

In witness whereof I have hereunto set my hand and seal this 19th day of February, 1917.

MAX W. STÖHR. [L. S.]

In the presence of:

HERBERT A. HEYN.

452 Know all men by these presents, That I Max W. Stöhr for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto Eduard Stöhr Certificate No. 1 for eighteen hundred & seventy-five (1,875) shares of stock of Stoehr & Sons, Inc., standing in my name, on the books of the Stoehr & Sons, Inc., and do hereby constitute and appoint Eduard Stöhr my true and lawful Attorney irrevocable for and in my name and stead to my use, to sell, assign, transfer and set over all or any part of the said Stock, and for that purpose to make and execute all necessary acts of Assignment and Transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that said Attorney or substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the 19th day of February one thousand nine hundred and seventeen.

MAX W. STÖHR.

Sealed and delivered in the presence of

GEORG G. ROHLIG.

453 *Declaration of Trust.*

Know all men by these presents that I, the undersigned, do hereby declare and certify that I hold the Eighteen hundred and seventy-five (1,875) shares of stock of Stoehr & Sons, Inc., a New York corporation, which are standing in my name and are evidenced by certificate No. 1 of said Company dated February 19, 1917, in trust, for the benefit of Eduard Stoehr, who is the beneficial owner of the same and that said shares of stock are standing in my name as a matter of convenience and that I myself have no interest in the same except as trustee.

I do further agree that I will at any time at the request of said Eduard Stoehr endorse and transfer the said shares to him or his nominees.

In witness whereof I have hereunto set my hand and seal this 19th day of February, 1917.

MAX W. STÖHR. [L. S.]

In the Presence of:

GEORG G. RÖHLIG.

DEFENDANTS' EXHIBIT A-1.

Defendants' Exhibit A-1 consisted of the by-laws of the Botany Worsted Mills adopted July 30, 1918. Articles 1, 2 and 3 thereof were the same as corresponding articles in Defendants' Exhibit J. Article 4 was amended to strike out the provision of the old by-laws, Defendants' Exhibit J, requiring that stock should be issued in certificates of five shares each.

Article 5 relates to officers. Article 6 relates to the duties of the President and Vice-President. Article 7 relates to the duties of the Treasurer and Assistant Treasurer. Article 8, duties of Superintendent. Article 9, duties of Secretary. Article 10, directors and their compensation and the Executive Committee. Article 11, the business year. Article 12, meetings of directors. Article 13, meetings of stockholders. Article 14, place of meetings. Article 15, quorum. Article 16, alteration and amendment of by-laws. Article 17, relating to the stockholders and elections, was as follows:

"Article XVII.

Stockholders and Elections.

"1. Each stockholder shall be entitled to a certificate or certificates stating the number of shares held by him. Each stockholder of the company shall be entitled at any meeting of stockholders to one vote for each share of stock registered in his name on the books of the company which is represented at said meeting by him in person or by proxy. The registered holder of each share of stock shall be deemed by the company to be the owner thereof, and the company shall be under no obligation or duty to recognize any other ownership thereof or interest therein.

"2. At all stockholders' meetings stockholders may vote in person or by a proxy authorized by a writing executed by the record holder of the shares on the books of the company. No proxy shall be voted on, allowed or received at any meeting held more than eleven months after its date.

No share of stock shall be voted on at an election for directors which has been transferred on the books of the company within ten days preceding such election."

Article 18 relating to transfer of shares was as follows:

"Article XVIII.

Transfer of Shares.

"Stock shall be transferable only upon the books of the company by the holder thereof in person or by his duly authorized attorney. The holder of record of stock upon the books of the company shall

be the only person whom the company shall recognize as the owner thereof.

"The stock transfer books may be closed for such period and under such conditions as the board of directors may at any time determine.

"The board of directors may, in its discretion, designate and appoint a trust company to be the transfer agent of the stock of the company."

Article 19 relates to lost, stolen or destroyed certificates of stock. Article 20, to dividends and net profits. Article 21 relating to the distribution of profits was as follows:

Article XXI.

Distribution of Profits.

"1. After the close of the first half of every business year of the company, a computation of profits shall be made and, if practicable, a dividend not exceeding three per cent (3%) shall be declared, payable on the September fifteenth following.

455 "2. At the close of the business year the net profits of said business shall, after deductions in the absolute discretion of the board of directors shall have been made for or on account of depreciation in the value of the plant or property of the company, and after the board of directors shall, also in its absolute discretion, have made or provided special deductions from accounts, and provided for or set aside reserves of all kinds, or additional reserves, in the discretion of the board of directors be distributed as follows:

(1) To the stockholders a dividend of six per cent (6%), in the computation of which said dividend payable September fifteenth the same business year shall be included.

(2) To employees as extra compensation such sums, if any, as the board of directors in its absolute discretion may determine.

(3) The net profits of said business year remaining after the payment of or provision for (1) and (2) above shall be applied as follows:

(a) Five per cent. (5%) thereof shall be placed in a reserve fund until the amount of the reserve fund accumulated shall be equal to twenty per cent (20%) of the paid up capital stock of the Company for the time being.

(b) Such sum not exceeding thirty-two per cent (32%) thereof, as the board of directors with the approval of the stockholders given at the annual meeting of the stockholders of the Company or at a special meeting called for that purpose shall determine, shall be paid to the members of the board of directors or officers and executives, or any of them, as additional compensation for their services. Each such director, officer and executive shall receive of said sum such pro-

portion as shall be determined by the board of directors with the approval of the stockholders as aforesaid. Said proportion may as to any one or more of said directors or officers and executives be so determined after the close of said business year, or, in the discretion of the board of directors, with the approval of the stockholders given at the annual meeting of the stockholders of the Company or at a special meeting called for that purpose, at any time prior to the close of said business year by contract between the Company and such director or officer or executive.

But nothing in this article contained shall be held or deemed to impair or effect the force or validity of the contracts heretofore made between the Company and certain officers and executives for the fiscal year ended November 30, 1918.

(c) The residue may be applied as follows:

(I) For payments to or provisions for any institutions, such as pension funds and other similar institutions, which are designed to benefit employees.

(II) For such additional dividend or dividends as the board of directors shall in its sole discretion determine.

The action of the board in respect to any deductions or reserves, or the action of the board and the stockholders in respect to any such distribution of extra compensation, if any, and the proportions thereof, if any shall be distributed, and the making of any other decision or the exercising of any other discretion, and action or non-action upon or in respect of any other matter embraced in or contemplated by this article, shall be conclusive and final and shall not be subject to review or attack by any director, officer or executive or other person in any court or forum.

Article 22, seal. Article 23, Executive Committee.

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DEFENDANTS' EX. B-1.

Waiver of Notice and Minutes of Meeting of the Board of Directors of Stoechr & Sons, Inc., Held June 1st, 1917.

457

Stoechr & Sons, Inc.

Waiver of Notice of Meeting of the Board of Directors of Stoechr & Sons, Inc.

We, the undersigned, being all the directors of the above named Company, do hereby waive notice of the time, place and object of holding a meeting of the Board of Directors of said Company, and do hereby appoint the office of the Botany Worsted Mills, Passaic, New Jersey, as the place and June 1st, 1917, at 11 o'clock A. M. as the time of holding the said meeting, and do hereby consent to and

ratify any and all action of the Board of Directors taken at said meeting.

Dated: New York, June 1st, 1917.

HANS E. STOEHR.
MAX W. STÖHR.
GEORG G. RÖHLIG.
ALFRED DE LIAGRE.

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Stoechr & Sons, Inc.

Minutes of Meeting of the Board of Directors of Stoechr & Sons, Inc.

A meeting of the Board of Directors of the above named Company was held on the 1st day of June, 1917, at 11 o'clock A. M. at the office of the Botany Worsted Mills, at Passaic, New Jersey, pursuant to a written waiver of notice signed by all of the directors fixing said time and place.

The following directors were present:

Messrs. Hans E. Stoechr, Max W. Stöhr, Georg G. Röhlig, Alfred de Liagre, constituting the entire board of directors.

Mr. Hans E. Stoechr, president, presided and Mr. Max W. Stöhr acted as secretary of the meeting.

The secretary presented and read a waiver of notice of the meeting signed by all the directors which was ordered filed in this minute book.

The reading of the minutes of the last meeting of the board of directors of the Company was dispensed with.

Upon motion duly made, seconded and carried, the following resolutions were adopted:

Resolved, that the company issue debenture bonds to the total amount of \$1,000,000 divided into 1,000 bonds of \$1,000 each, which bonds shall be payable in gold coin of the United States, principal as well as interest, and shall bear date March 1st, 1917, and shall be payable in ten years from the date thereof, and shall be redeemable at the option of the company after five years from the date thereof, and if redeemed before maturity, such redemption shall be at

the rate of 105, in other words, \$1,050 for each of said bonds;

458½ said bonds shall bear interest as aforesaid at the rate of 6% payable March 1st and September 1st, in the City of

New York; coupons for the payment of interest shall be annexed upon which the signature of the treasurer may be printed; the bonds shall be payable to bearer (or may be registered at the option of the bondholder, and in such event, shall be payable to the registered owner) and shall be signed by the president or vice president and the treasurer of the Company.

Resolved further, that the president and treasurer are authorized to have a proper form of bonds and coupons prepared and to cause the same to be printed and to be executed by the officers of the company as hereinbefore directed, and to seal the same with the seal of the company; said bonds to be numbered 1 to 1,000 both inclusive, and the said officers of the company are authorized to issue the said

1,000 bonds at par and apply the same to any lawful purposes of the company including the raising of capital and the payment of any debts, accounts or obligations of the company.

Resolved further, that the officers of the Company hereinbefore named are authorized and directed to prepare or to have prepared, signed, executed and delivered any and all papers and to perform all acts necessary or proper to carry out the foregoing resolutions.

There being no further business before the meeting the same thereupon adjourned.

MAX W. STÖHR,

Secretary.

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DEFENDANTS' EXHIBIT C-1.

- (9) *Demand by Alien Property Custodian for Rights, Privileges and Benefits of Kammgarnspinnerei Stoehr & Company under the Contract Between It and Stoehr & Sons, Inc., Dated February 20, 1917.*

Mr. Quinn reported that the Treasurer of this Company had been served by the Alien Property Custodian with a demand for the rights, privileges and benefits of Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, under the contract between it and the Company dated February 20, 1917, with respect to 14,900 shares of Botany Worsted Mills stock, and that the Treasurer of the Company had admitted service of said demand.

Upon motion, duly seconded and unanimously carried, it was

Resolved that the action of the Treasurer of this Company in admitting service of said demand be and the same hereby is approved; and that Mr. Quinn, as counsel for this Company, be and he hereby is authorized and directed to write to the Alien Property Custodian in response to said demand stating that (1) Stoehr & Sons, Inc. has made no payments to said Kammgarnspinnerei Stoehr & Company, Actiengesellschaft, under said contract dated February 20, 1917; (2) that Stoehr & Sons, Inc. will make no payments to the said Kammgarnspinnerei Stoehr & Company under said contract while the Trading with the Enemy Act is in force; and (3) that this Company has been advised that said contract of February 20, 1917, was abrogated and became inoperative upon the declaration of war; that this Company has in its possession nothing to deliver to the Alien Property Custodian pursuant to said demand, but that it accepts said demand and gives it full force and effect and does not wish in any way to question its propriety or legal effect.

- (10) *Demands Served upon the Company by the Alien Property Custodian on March 13, 1919.*

Counsel reported that the Alien Property Custodian on March 13, 1919, had served demands upon the Company as follows:

(a) For stock of Eduard Stoehr and Georg Stoehr in Stoehr & Sons, Inc.

(b) For voting trust certificates of the same enemies representing or purporting to represent stock in Stoehr & Sons, Inc.

(c) The interests of said enemies in the partnership of Stoehr & Sons.

Upon motion, duly seconded and unanimously carried, it was

Resolved that counsel for this Company be and he
461 hereby is authorized and directed to write to the Alien Property Custodian in response to said demands stating that:

(1) With reference to the demand for the stock of Eduard Stoehr and Georg Stoehr, the said stock was issued on February 19, 1917, as follows:

No. of certificate,	To whom issued.	Number of shares.
1	Max W. Stoehr	1,875
3	Max W. Stoehr	223.21;

that the said Max W. Stoehr received said certificate No. 1 as trustee for Eduard Stoehr and certificate No. 3 as trustee for Georg Stoehr; that on the same day, namely, February 19, 1917, all of the shares of the stock of Stoehr & Sons, Inc., amounting to 2,500 shares, were transferred to Hans E. Stoehr, Max W. Stoehr and Georg Roehlig as voting trustees, and certificate No. 5 for 2,500 shares was issued to said three voting trustees and now stand in their name; that the said Hans E. Stoehr and the said Georg Roehlig have since died and the said Max W. Stoehr is now the sole surviving voting trustee; that none of said voting trustees were alien enemies; that therefore Stoehr & Sons, Inc. cannot comply with the demand for the said stock, but that the Board of Directors accepts the said demand for the purpose of giving the same full force and effect and does not in any way wish to question its propriety or legal effect.

462 (2) With reference to the demand for the voting trust certificates of Eduard and Georg Stoehr, said voting trust certificates are in the name of Max W. Stoehr and are in the possession of the Passaic Trust and Safe Deposit Company of Passaic, New Jersey, as depository for the Alien Property Custodian; that said voting trust certificates are as follows:

No. of certificate.	To whom issued.	Number of shares.
1	Max W. Stoehr, trustee.	1,875
3	Max W. Stoehr, trustee.	223.21;

that Stoehr & Sons, Inc., and the Board of Directors of this Company have no power to compel Max W. Stoehr to make and issue new voting trust certificates and deliver the same to the Alien Property Custodian, but that this Company accepts said demand for what it may be worth and does not wish to question the propriety or legal effect of said demand.

(3) With reference to the demand for the interests of Eduard Stoehr and Georg Stoehr in the partnership of Stoehr & Sons, Stoehr

& Sons, Inc. cannot comply with the demand of the Alien Property Custodian for the delivery to him of 42/56 of the assets of the partnership, Stoehr & Sons, being the proportionate interest of Eduard Stoehr, and 5/56 of said partnership assets, being the proportionate interest of Georg Stoehr, for the reason that the assets of said partnership were by bill of sale dated February 19, 1917, transferred
 463 to Stoehr & Sons, Inc.; that the consideration for the transfer of said assets was the issuance of all of the stock of Stoehr & Sons, Inc.; that the stock of Stoehr & Sons, Inc. was thereupon issued as follows:

No. of certificate.	To whom issued.	Number of shares.
1	Max W. Stoehr.	1,875
2	Hans E. Stoehr.	359-14/100
3	Max W. Stoehr.	223-21/100
4	Max W. Stoehr.	44-65/100;

that thereafter all of said shares of stock of Stoehr & Sons, Inc. were transferred to Hans E. Stoehr, Max W. Stoehr and Georg Roehlig as voting trustees and voting trust certificates were then issued therefor as follows:

No. of certificate.	To whom issued.	Number of shares.
1	Max W. Stoehr, trustee.	1,875
2	H. E. Stoehr.	357-14/100
3	Max W. Stoehr, trustee.	223-21/100
4	Max W. Stoehr, trustee.	44-65/100;

that so long as said voting trust certificates are outstanding and said stock outstanding, and until the same are surrendered and returned to this company for cancellation, this Board is advised by counsel that it would have no right or power to deliver the proportion of the assets of Stoehr & Sons belonging to said partners, and received by this company under said bill of sale, or the avails of said assets, to the Alien Property Custodian; but that this Company accepts
 464 said demand for what it may be worth and does not wish to question its propriety or legal effect.

465

DEFENDANTS' EXHIBIT "D1."

Trust No. 4017. (Duplicate Original.) Report No. 5263.

Demand by Alien Property Custodian.

(Copy to Stoehr & Sons, Inc., 200 Fifth Ave., (120 Broadway), New York City.)

To Botany Worsted Mills,
 Address, Dayton Ave., Passaic, N. J.:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress

known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, said proclamations and executive orders, after investigation do determine that those certain shares of your capital stock heretofore registered and standing upon your books in the name of the person or persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof, (said schedule being identified by the signature Dorothy Pilcher on the margin thereof) and evidenced or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock is registered or stands, of the number and class of shares listed in Column No. 3 of said schedule, on the same line as aforesaid, belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed on the same line therewith in Column No. 4 of said schedule.

I do further, after investigation, determine that said persons whose names are listed in said Column No. 4 and whose addresses are given in Column No. 5 on the same line therewith, are enemies and each of them is an enemy not holding a license granted by the President (Interlineation made before execution) within the purview of said Act as amended and said proclamations and executive orders issued in pursuance thereof.

As such Alien Property Custodian, by virtue of the authority vested in me, I do hereby seize such shares of stock and each and all of them, and do require that the same be by you transferred, assigned and delivered to me; and you are required to cancel forthwith upon your books and records all of the said shares of stock listed in said schedule and in lieu thereof to issue new certificates respectively in the name of the person or persons as specified in Column No. 6 of said schedule.

This demand is supplementary to any demands which may have been heretofore made upon you with respect to said shares or certificates and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

Witness my hand and seal of office, this 11th day of February, 1919.

[Seal of A. P. C. Office.]

(Signed)

A. MITCHELL PALMER,

Alien Property Custodian.

(Signed) T. L. PLACE.

On the back of the foregoing exhibit is the following admission of service:

"Service of the within demand accepted this 24th day of February, 1919.

BOTANY WORSTED MILLS,

(Signed)

By W. J. HELLMER,

Secretary and Assistant Treasurer."

466 Annexed to the foregoing demand as Exhibit A and made part thereof was a schedule therein identified, in Column No. 1 of which under the printed heading reading as follows: "Name of person in whose name shares of stock or other beneficial interests stand or stood," were the words: "Stoehr & Sons, Inc." In the second Column, with the printed heading "Certificate No. —," were the numbers of the five-share certificates aggregating 14,900 shares. In the third column, headed "Number and kind of shares," under the column headed "common" appeared "14,900." The fourth column had the following printed heading: "Name of enemy for, on account of, or on behalf of whom shares of stock or other beneficial interests are or were held." And under that column appeared the following: "Kammgarnspinnerei Stoehr & Co., Aktiengesellschaft." In the fifth column, under the printed heading "Address" appeared: "Plagwitz-Leipzig, Germany." The sixth column, had the printed heading: "Name to whom new certificate to be issued," and below said heading was the following:

"A Mitchell Palmer as Alien Property Custodian—Trust No. 4,017.

"The above new certificates to be delivered to Peoples Bank & Trust Company of Passaic, N. J., as depository for Alien Property Custodian."

467

DEFENDANTS' EXHIBIT E1.

Original.

J. M. C. C./E. C.
A. P. C. Form No. 106-A.

Report No. 4845.
Trust No. E-1293.

Demand on Corporation for Stockholder's Interest Without Presentation of Certificates.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

"Any payment, conveyance, transfer, assignment or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy deliver up any notes, bonds or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

Sec. 1 (c). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power, and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act,' and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Sec. 3 (d). "The Alien Property Custodian may exercise any right, power or authority of the enemy in, to, and over corporate stock, shares, or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or

for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company, or trustee which issued such stock, shares, or certificates, to the holders or owners of similar stock, shares, or certificates, (2) the right to exercise all voting power appertaining to such stock, shares, or certificates, and (3) the right to receive all subscription rights, dividends, and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares, or certificates, regardless of whether or not such stock, shares, or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares, or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company, or trustee issuing the same."

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To Stoehr & Sons, Inc.,

Address, 200 Fifth Ave., New York City:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and by said executive orders, after investigation do determine that: Eduard Stoehr, whose
(Name of enemy or ally of enemy.)
address is Leipzig, Germany, is an enemy (not holding a license
(Last known address.)

granted by the President), and has a certain right, title, and interest in and to 1,875 shares of Common stock standing on your books
(Common, preferred.)

in the name of Eduard Stoehr.

I, as Alien Property Custodian, do hereby require that you shall convey, transfer, assign, and deliver to me as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law, every right, title, and interest of the said enemy in said stock, including in respect to the said stock the right which the said enemy may have, (a) to receive all notices issued by you to the holders or owners of similar stock, shares, or certificates; (b) to exercise all voting power appertaining to such stock, shares, or certificates; (c) to receive all subscription rights, dividends, and other distributions and payments, whether of capital or of income, declared or made on account of such stock, shares, or certificates.

I, as Alien Property Custodian, do hereby further require that you note the substance of this demand upon your stock books and/or stock ledger, and that you furnish a copy of this demand to the registrar and/or transfer agent, if any, of the stock in respect to which this demand is made.

I, as Alien Property Custodian, do hereby further require that within ten days from the service of this demand upon you, you report to me any and all acts which you have done, or omitted to do, pursuant to the requirements of this demand.

Until otherwise directed, you will remit to the Alien Property Custodian at Washington, by check payable to his order, all payments, whether of capital or income, now or hereafter declared or due on account of such stock, shares, or certificates, and you will direct such notices in respect to the said stock, shares, or certificates to the Alien Property Custodian.

This demand is supplementary to any demand which may hitherto have been made upon you, accompanied by the presentation of certificates which represent shares or beneficial interests, for the transfer into my name, as Alien Property Custodian, of such certificates, or for the transfer thereof into the name of any nominee of me as Alien Property Custodian, and this demand shall not prejudice or affect any demand accompanied by such certificates which has been, or which may hereafter be, made.

Witness my hand and seal of office, this sixth day of August, 1918.

A. MITCHELL PALMER,
Alien Property Custodian,
By J. L. DAVIS,
Managing Director.

G. B. L.

The foregoing exhibit contained a rider on the face thereof as follows:

"A. P. C.—M. M.—188—Rev.

You are hereby instructed to remit all accumulated dividends direct to this office upon receipt hereof. If checks for accumulated dividends have heretofore been drawn in favor of the enemy and are now held by you, you may send such checks direct to this office. All future dividends shall be remitted to Peoples Bank & Trust Co. as depository for Alien Property Custodian. Trust No. E-1293 which has been duly designated as the depository of this trust.

You will also direct all notices hereby demanded to said depository and identify each notice by the trust number hereof."

On the back of said exhibit was the following admission of service:

"Service of the within demand accepted this 20th day of August, 1918.

STOFHR & SONS INC.,
By MAX W. STOEHR,
Secy."

468 Defendants' Exhibit F-1 was upon the same form, A. P. C. Form No. 106-A, upon which Defendants' Exhibit E-1 was made, and was dated August 6, 1918, and demanded the stock of Georg Stoehr & — Leipzig, Germany in Stoehr & Sons, Inc. consisting of 222.21 shares of common stock and was in other respects

identical with Defendants' Exhibit E-1. Defendants' Exhibit F-1 had endorsed upon the back thereof the following:

"Service of the within demand accepted this 29th day of August, 1918.

STOEHR & SONS, INC.,
By MAX W. STOEHR,
Secy."

469

DEFENDANTS' EXHIBIT G-1.

A. P. C. Form No. 106.

Report No. 3164.
Trust No. F-1293-Z

Original.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

To Max W. Stoehr,

Address, 136 Pennington Ave., Passaic, New Jersey:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property, to wit:

All that certain money and property mentioned and particularly described in your report to the Alien Property Custodian, dated December 3rd, 1917, as owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of the "person" hereafter mentioned and determined to be an enemy, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatsoever now in your possession, or which may hereafter come into your possession.

The Passaic Tr. & Safe Dep. Co. is hereby designated as depository, and is authorized to receive for and on behalf of the Alien Property Custodian the property herein mentioned, and upon the service of this demand on you by said depository, you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to depository, which in all cases should be made payable to the Alien Property Custodian.

is by you owing and belonging to and held for, by, on account of, and on behalf of, and for the benefit of Eduard Stoehr, Address: Leipzig, Germany, whom after investigation I do determine to be an enemy not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

Witness my hand and seal of office, this 4th day of March, 1918.

A. MITCHELL PALMER,

Alien Property Custodian,

By J. L. DAVIS.

Alien Property Custodian, Washington, D. C.

Inclosure No. 15286.

On the back of the foregoing exhibit was the following admission of service:

"Service of the within demand accepted this 8th day of March, 1919.

MAX W. STOEHR."

469½

DEFENDANTS' EXHIBIT H-1.

Defendants' Exhibit H-1 was on the same form as Defendants' Exhibit G-1, namely A. P. C. form No. 106, was dated March 4, 1918, was addressed to Max W. Stoehr and demanded the voting trust certificate for 222.21 shares of the common stock of Stoehr & Sons, Inc., held by Max W. Stoehr as trustee for Georg Stoehr, of Leipzig, Germany. Defendants' Exhibit H-1 was endorsed as follows: "Service of the within demand accepted this 8th day of March, 1918. Max W. Stoehr."

470

DEFENDANTS' EXHIBIT I-1.

Trust No. 532.
1293.

Report No. 4845.
4845.

(Duplicate Original.)

Demand by Alien Property Custodian.

To Stoehr & Sons, Inc. (a corporation):

To Max W. Stoehr, as Trustee, and Individually:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, said proclamations and executive orders, after investigation do determine that:

Those certain shares of the capital stock of said Stoehr & Sons, Inc., a corporation, heretofore registered and standing upon the books of said Stoehr & Sons, Inc., in the name of the person or persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof (said schedule being identified by the signature Abbie A. Baker on the margin thereof), and evidenced or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock was registered or stood, of the number and class of shares listed in Column No. 3 of said schedule on the same line as aforesaid, which said shares of stock (together with other and additional shares of the same kind not included within the following seizure or requirements) were subsequently registered or attempted to be registered on the books of said Stoehr & Sons, Inc., in the names of said Hans E. Stoehr, Max W. Stoehr and Georg G. Röhlrig as voting trustees, and (together with such other and additional shares not included within the following seizure or requirements) evidenced or represented or attempted to be evidenced or represented by Certificate No. 5, in the name of said Hans E. Stoehr, Max W. Stoehr and Georg Röhlrig as voting Trustees.

Belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed in the same line therewith in Column No. 4 of said schedule.

I, as such Alien Property Custodian, after investigation have heretofore determined and do hereby determine that said persons whose names are listed in said Column No. 4 and whose addresses are given in Column No. 5 on the same line therewith, are enemies and each of them is an enemy, not holding a license granted by the President within the Purview of said Act as amended and said proclamations and executive orders issued in pursuance thereof.

As such Alien Property Custodian, by virtue of the authority vested in me, I do hereby seize such shares of stock and each
471 and all of them, and do require that the same be by you transferred, assigned, and delivered to me; and said Stoechr & Sons, Inc., is hereby required to cancel forthwith upon its books and records all of the said shares of stock listed in said schedule and subsequently registered, evidenced or represented or attempted to be registered, evidenced or represented as aforesaid, and in lieu thereof to issue new certificates respectively in the name of the person or persons as specified in Column No. 6 of said schedule.

This demand is supplementary to any demands which may have been heretofore made upon you with respect to said shares or certificates and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

Witness my hand and seal of office, this fifth day of March, 1919.

FRANCIS P. GARVAN,
Alien Property Custodian.

[SEAL.]

W. S. PLACE.

Approved for execution.
(Sgd.)

SPYER WHITTAKER,
Bureau of Law.

3/3/19.

Service of the above demand accepted this 13th day of March 1919.

(Sgd.)

STOEHR & SONS, INC.,
By LOUIS HESSE,
Treas.

Service of the within demand accepted this — day of March, 1919.

As Trustee and Individually.

472

EXHIBIT A.

Attached to Demand Issued by the Alien Property Custodian, Dated the Fifth Day of March, 1919, and Identified by the Following Signature: Abbie A. Baker.

1	2	3	4	5	6
Name of person in whose name shares of stock or other beneficial interests stand or stood.	Certificate No.	Number and kind of shares.	Name of enemy for, on account of, or on behalf of whom shares of stock or other beneficial interests are or were held.	Address.	Name to whom new certificate to be issued.
Max W. Stochr...	1	1875	.....Eduard Stochr... Leipzig, Germany,	Francis P. Garvan, as Alien Property Custodian, Trust No. 1,293.	
Max W. Stochr...	3	223 21/100.....	.....Georg Stochr... Leipzig, Germany,	Francis P. Garvan, as Alien Property Custodian, Trust No. 532.	

473 Annexed to Defendants' Exhibit I-1 and forming a part thereof was the affidavit of Paul Kieffer, sworn to March 28, 1920, that on March 28, 1920, at 115 Broadway, Borough of Manhattan, New York City, he served the demand, Defendants' Exhibit I-1, addressed to Stoehr & Sons, Inc., and to Max W. Stoehr as trustee and individually, upon Max W. Stoehr as trustee and individually, said Max W. Stoehr being one of the persons upon whom said demand was made, by delivering to said Max W. Stoehr a true and correct copy of said demand and leaving the same with him and that said Paul Kieffer knew the person so served to be the person mentioned and described in said demand as Max W. Stoehr as trustee and individually.

474 DEFENDANTS' EXHIBIT J-1.

(Duplicate Original.)

Trust No. 532.

Report No. 4845.

Report No. —.

Trust No. 1293.

Report No. 4845.

Report No. —.

Demand by Alien Property Custodian.

Copy to Stoehr & Sons, Inc. (a corporation).

To Max W. Stoehr, as Voting Trustee and as Trustee and Individually:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, and said proclamations and executive orders, after investigation do determine that:

Those certain Voting Trust Certificates representing or purporting to represent shares of common capital stock of Stoehr & Sons, Inc., (a corporation), which said Voting Trust Certificates were heretofore registered or standing upon the books of Max W. Stoehr, Hans E. Stoehr and Georg H. Roehlig, voting trustees, as follows:

Voting trust certificate numbers.	Number of shares represented or purported to be represented.	Voting trust certificates issued to—	Voting trust certificates held for—	Address of person for whom held.
1	1,875	Max W. Stoehr Trustees	Eduard Stoehr	Leipzig, Germany
3	223.21	Max W. Stoehr Trustee	Georg Stoehr	Leipzig, Germany

which said Voting Trust Certificates represent or purport to represent shares of the common capital stock of said Stoehr & Sons, Inc., as indicated above, theretofore registered and standing upon the books of said Stoehr & Sons, Inc., and evidenced or represented by stock certificates of Stoehr & Sons, Inc., bearing the same certificate numbers and for the same numbers of shares as the Voting Trust Certificates listed in the above schedule; together with any and all rights, privileges and benefits of said Eduard Stoehr and said Georg Stoehr in any way arising out of the creation of said Voting Trust or evidenced by said Voting Trust Certificates.

Belong to and are by you held for, on account of, on behalf of, or for the benefit of Eduard Stoehr and said Georg Stoehr, respectively, as indicated in the above schedule.

I, as such Alien Property Custodian, after investigation have heretofore determined and do hereby determine that said Eduard Stoehr and said Georg Stoehr are enemies and that each of them is an enemy not holding a license granted by the President within the purview of said Act as amended and said proclamations and executive orders issued in pursuance thereof.

475 As such Alien Property Custodian, I do hereby seize said Voting Trust Certificates and each and all of them, together with any and all rights, privileges and benefits of said Eduard Stoehr and said Georg Stoehr in any way arising out of the creation of said Voting Trust or evidenced by said Voting Trust Certificates, and do require that the same be by you transferred, assigned and delivered to me; and you are hereby required to cancel forthwith upon your books and records all of the said Voting Trust Certificates and in lieu of said Voting Trust Certificate No. 1 to issue new Voting Trust Certificate in the name of "Francis P. Garvan, as Alien Property Custodian, Trust No. 1293," and in lieu of said Voting Trust Certificate No. 3 to issue new Voting Trust Certificate in the name of "Francis P. Garvan, as Alien Property Custodian, Trust No. 532."

This demand is supplementary to any demands which have been heretofore made upon you with respect to said shares of stock and/or said Voting Trust Certificates and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

Witness my hand and seal of office this 10th day of March, 1919.
[SEAL.]

FRANCIS P. GARVAN,
Alien Property Custodian.

W. S. PLACE.

Approved for execution March 7, 1919.

(Sgd.)

SPIER WHITAKER,
Bureau of Law.

Service of the above demand accepted this 13th day of March, 1919.

(Sgd.)

STOEHR & SONS, INC.,
By LOUIS HESSE,
Treas.

Service of the within demand accepted this — day of March, 1919.

*As Voting Trustee and as
Trustee and Individually.*

Annexed to Defendants' Exhibit J-1 was the affidavit of Paul Kieffer sworn to March 20, 1919 that on March 20, 1919, at 115 Broadway, Borough of Manhattan, New York City he served the annexed demand, Defendants' Exhibit J-1, upon Max W. Stoehr, as voting trustee and as trustee and individually, one of the persons upon whom said demand was made, by delivering to said Max W. Stoehr a true and correct copy of said demand and leaving the same with him, and that he, the said Paul Kieffer, knew the person so served to be the person mentioned in said demand as Max W. Stoehr as voting trustee and as trustee and individually.

DEFENDANTS' EXHIBIT K-1.

(Duplicate Original.)

1293.

Trust No. 532.

Report No. 37925.

Demand by Alien Property Custodian.

To Stoehr & Sons, Inc. (a corporation), 200 5th Avenue (120 Broadway), New York City:

To Max W. Stoehr:

To Lotte Stoehr, executrix of estate of Hans E. Stoehr:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, and said proclamations and executive orders, after investigation do determine that Eduard Stoehr (address Leipzig, Germany) and Georg Stoehr (address Leipzig, Germany) are enemies and that each of them is an enemy not holding a license granted by the President within the purview of said Act as amended and said proclamations and executive orders; and that said persons on, to wit, February 3, 1917, and prior thereto, were partners in the co-partnership of Stoehr & Sons conducted in the City of New York, State of New York, and elsewhere, and that said persons as such partners now have the following proportionate interests, to wit:

Eduard Stoehr Forty-two Fifty-sixths (42/56)

Georg Stoehr Five Fifty-sixths (5/56)

in and to all of the property and assets of said co-partnership, and in and to all of the property and assets of said co-partnership of every kind, character, and description held on February 3, 1917, by said co-partnership or in its name, or for it, or on its behalf, and in and

to all accumulations and additions thereto, profits arising therefrom, and interest thereon, which said co-partnership and all of its assets were subsequently, to wit, on February —, 1917, conveyed, transferred, assigned, delivered, and paid over, or attempted to be conveyed, transferred, assigned, delivered, and paid over to said Stoehr & Sons, Inc., a corporation.

As such Alien Property Custodian, I do hereby seize said interests of said enemies in and to said partnership, and in and to all property and assets of every kind, character, and description held on February 3, 1917, by said co-partnership or in its name, or for it, or in its behalf, and in and to all accumulations, and additions, and in and to the profits arising therefrom, and interest thereon, and do require that the same shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian, to be by me as such official held, administered and accounted for as provided by law.

This Demand is supplementary to any demands which may have been heretofore made with respect to shares of stock of said enemies in Stoehr & Sons, Inc., and / or voting trust certificates representing, or purporting to represent, such shares, and shall not prejudice or affect any such demands, or any rights acquired by virtue thereof.

Witness my hand and seal of office, this 10th day of March, 1919.
[SEAL.] FRANCIS P. GARVAN,

Alien Property Custodian.

W. S. PLACE.

Approved for execution March 7, 1919.

(Sgd.)

SPIER WHITAKER,

Bureau of Law.

On the back of the foregoing exhibit were the following admissions of service:

"Service of the within demand accepted this 13th day of March 1919.

STOEHR & SONS, INC.,
By LOUIS HESSE,
Treasurer."

"Service of the within demand accepted this 24th day of March 1919.

LOTTE STOEHR,
Executrix of Estate of Hans E. Stoehr."

"Service of the within demand accepted this 28th day of March 1919.

MAX W. STOEHR."

478

DEFENDANTS' EXHIBIT L-1.

Trust No. 4017.

Report No. 1869.

(Duplicate Original.)

Demand by Alien Property Custodian.

To Stochr & Sons, Inc.,

Address 200 Fifth Avenue (120 Broadway), New York City:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the Amendments thereto, and the Proclamations and Executive Orders issued in pursuance thereof, by virtue of the authority thus vested in me, after investigation do determine that Kammgarn Spinnerei Stochr & Co., Aktiengesellschaft, of Plagwitz-Leipzig, Germany, is an enemy not holding a license granted by the President within the purview of the said Act as amended and said proclamations and Executive Orders.

As such Alien Property Custodian, after investigation I do further determine that:

all those certain rights, privileges and benefits created in favor of and granted to Kammgarnspinnerei Stochr & Co., Aktiengesellschaft, said enemy, by the terms of that certain contract entered into between said Stochr & Sons, Inc. and said enemy, dated the 20th day of February, 1917, with respect to certain 14,900 shares of the common capital stock of Botany Worsted Mills, a corporation, a copy of which said contract is attached hereto marked "Exhibit A."

Belong to or are held by you for, on account of, on behalf of, or for the benefit of said enemy Kammgarnspinnerei Stochr & Co., Aktiengesellschaft.

I, as such Alien Property Custodian hereby seize every such right, privilege and benefit created in favor of and granted to said enemy by said contract, including every power and authority thereover which might or could be exercised by said enemy whether presently payable or deliverable, or payable or deliverable in the future,

479 or to be exercised presently or in the future, and as such Alien Property Custodian, I do require that all of said property shall be by you conveyed, transferred, assigned, delivered and paid over to me as such Alien Property Custodian to be by me held, administered and accounted for as provided for by law.

This demand shall not prejudice or affect any demands heretofore or hereafter made with respect to said 14,900 shares of the common capital stock of Botany Worsted Mills or any rights, privileges or benefits acquired by virtue thereof.

Witness my hand and seal of office this 26th day of February, 1919.

[SEAL.]

A. MITCHELL PALMER,

Alien Property Custodian.

W. S. PLACE.

Service of above demand accepted this 13th day of March, 1919.
STOEHR & SONS, INC.,

By **LOUIS HESSE,**
Treas.

480 Exhibit A attached to the foregoing demand and forming part of Exhibit L-1 was a copy of Defendants' Exhibit A, printed in full among these exhibits, and for that reason said Exhibit A is not printed here.

481

DEFENDANTS' EXHIBIT M-1.

Stoehr & Sons, Inc.

January 14, 1918.

Annual stockholders' meeting at 200 Fifth Ave., 4.00 P. M.
 Election of Directors as follows:

Hans E. Stoehr.
 Max W. Stoehr.
 George G. Roehlig.
 Alfred de Liagre.

January 14, 1918.

Directors' meeting at 200 5th Avenue, 4.15 P. M. Election of Officers as follows:

President, Hans E. Stoehr.
 Vice-President, Georg G. Roehlig.
 Secretary, Max W. Stoehr.
 Treasurer, " " "
 Asst. Secretary, Alfred de Liagre.
 Asst. Treasurer, " " "

March 20, 1918.

Directors' meeting at 200 5th Avenue, 5.30 P. M. James N. Wallace elected director in place of Hans E. Stoehr deceased. Alfred de Liagre resigned as director; Francis P. Garvan elected. Georg G. Roehlig resigned as director; Andrew S. Duvall elected.

New board of directors as follows:

James N. Wallace.
 Francis P. Garvan.
 Andrew B. Duvall.
 Max W. Stoehr.

April 30, 1918.

Directors' meeting at 54 Wall Street, 1.20 P. M. James N. Wallace elected President in place of Hans E. Stoehr deceased. Max W. Stoehr resigned as Treasurer and Louise Hesse was elected in his place.

October 14, 1918.

Directors' meeting at 54 Wall Street—2.30 P. M. Max W. Stoeck resigned as Director and secretary. Paul Kieffer was elected Director in place of Max W. Stoeck. Justus Sheffield was elected Secretary in place of Max W. Stoeck.

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November 20, 1918.

Directors' meeting at 54 Wall Street—2.00 P. M. Mr. Paul Kieffer was elected Vice-President.

March 28, 1919.

Directors' meeting at 80 Broadway—2.30 P. M.

Mr. Garvan resigned as director March 10, 1919. His resignation was submitted to and accepted at the meeting of March 28, 1919, and Colonel Douglas I. McKay was elected director in his place at said meeting. (Page 27 of Minute Book.)

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DEFENDANTS' EXHIBIT N-1.

Defendants' Exhibit N-1 consisted of the following extracts from the minutes of a special meeting of the board of directors of Stoeck & Sons, Inc., held November 12, 1918, said extracts being as follows:

(1) *Minutes of Last Previous Meeting Held November 1, 1918.*

The minutes of the meeting of the board held on November 1, 1918, were presented, and upon motion, duly seconded and carried, the said minutes were approved and their reading dispensed with.

(2) *Sale of 1,290 Shares of Stock of the Botany Worsted Mills Held by the Company.*

Mr. Quinn reported that at the last meeting of the Board a resolution was adopted authorizing the sale by the Company of 1,290 shares of stock of the Botany Worsted Mills held by the Company, said sale to be made jointly with the Alien Property Custodian, who will at the same time offer 24,410 shares of the stock of the Botany Worsted Mills held by the Alien Property Custodian. The said resolution was adopted after Mr. Quinn had read to the board the terms and conditions of sale then prepared by the Alien Property Custodian. Since the last meeting the same terms and conditions of sale have been amended.

484 Mr. Quinn further reported that the most important change that has been made in the terms of sale is that the Alien Property Custodian and Stoeck & Sons Inc. will make a

joint offer of 25,700 shares to be offered as an entirety. There will be no separate offering of the 1,290 shares of stock held by Stoehr & Sons Inc.

Mr. Quinn thereupon presented to the Board the amended terms and conditions of sale.

Upon motion, duly seconded and carried, the following resolutions were unanimously adopted:

"Resolved that it is to the best interests of this Company to offer for sale at public auction 1,290 shares of the stock of the Botany Worsted Mills owned and held by this Company and standing in its name on the books of the Botany Worsted Mills; and it is

Further resolved that the officers of this Company be and they hereby are authorized to offer said 1,290 shares of stock for sale as a portion of a lot consisting of 25,700 shares of stock of the Botany Worsted Mills in all respects as is set forth in the order of sale and terms and conditions of sale promulgated by the Alien Property Custodian, on Monday, December 2, 1918, of 24,410 shares of the stock of Botany Worsted Mills held by the Alien Property Custodian jointly with the sale by this Company of the said 1,290

485 shares standing in its name on the books of the Botany Worsted Mills; and the officers of this Company be and they hereby are authorized to assign and deliver the certificates for said 1,290 shares of the stock of the Botany Worsted Mills to the purchasers at said sale to be held by the Alien Property Custodian as aforesaid.

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DEFENDANTS' EXHIBIT O-1.

The General Trade License of the Department of State, War Trade Board, Section, dated July 14, 1919, authorized persons in the United States on and after July 14, 1919, "to trade and communicate with persons residing in Germany," subject to certain limitations therein defined. The license of July 20, 1919, contained definitions regarding trading in dyes and dyestuff. The license of July 20, 1919, further extended the license "to trade and communicate with persons residing in Germany," the only exemptions relating to the importation from Germany into the United States or elsewhere of dyes, dyestuffs, potash, drugs or chemicals which have been produced or manufactured in Germany, and provided that said license should not affect present restrictions upon trade and communication between the United States and Hungary, or that portion of Russia under the control of the Bolshevik authority, and contained certain other limitations not material to the issues in this case.

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DEFENDANTS' EXHIBIT P-1.

Defendants' Exhibit P-1 was a photographic copy of the report by the Botany Worsted Mills, by Thomas Prehn, President, sworn to by Thomas Prehn, December 11, 1917. It was addressed to the Alien Property Custodian. It was stamped upon page one thereof

as follows: "Alien Property Custodian. Received December 12, 1917." The first page thereof designated it as a report by a corporation incorporated within the United States under S-7 (a) of the Trading with the Enemy Act and set forth the penalty for the refusal or failure to make a report, gave instructions as to the making of a report, who must make the report and whose stock must be reported, gave definitions of enemy or ally of enemy as set forth in the law, and was addressed to the Botany Worsted Mills, a New Jersey corporation, at Dayton Avenue, Passaic, New Jersey.

Schedule 2 of said report required said Botany Worsted Mills to state the name of the enemy or ally of enemy, holders of stock, shares or certificates of beneficial interest on or after October 6, 1917, and as part of said schedule said report contained three pages setting forth in column form the following: the names of the registered enemy stockholders of the company, their residences, the number of shares and the numbers of the certificates, "each certificate for 5 shares of \$100 each." Said schedule 2 contained the names and addresses of enemy owners of record of stock of the Botany Worsted Mills, but did not schedule the 14,900 shares in question in this suit belonging to Kammgarnspinnerei Stoehr & Co., of Leipzig. As part of said Schedule 2 the Botany Worsted Mills by Thomas Prehn, President, certified as follows:

NOTE.—The Company also furnishes the Alien Property Custodian with the following information regarding stockholders of the company: * * *

"14,900 shares in the name of Stoehr & Sons, Inc., a New York corporation, in which the Company has reason to believe that Stoehr & Company, a corporation of Leipzig, Germany, has an interest under contract. On and prior to February 3, 1917, said last mentioned corporation had an interest in said shares which then stood in the name of H. E. Stoehr, New York City, and M. W. Stoehr, Passaic, New Jersey, as Trustee. The numbers of the certificates are: 51-1050, 3441-3500, 4061-5000 and 1051-1400, 2004-2017, 2041-2060, 2151-2171, 2861-2884, 2890-2898, 3161-3260, 5251-5309, 5389-5411, 5451-5750 (see also Schedule 4 of this report).

BOTANY WORSTED MILLS.
THOMAS PREHN,

President."

Schedule 4 of said report, Defendants' Exhibit P-1, was as follows:

List of all cases in which the undersigned has reasonable cause to believe that the stock or shares on February 3, 1917, were owned or are owned by an enemy or ally of enemy, though standing on the books in the name of another:

(Here follows table marked page 488.)

*Affidavit of Officer or Representative of Corporation or Association
Making Report.*

STATE OF NEW JERSEY,
County of Passaic, ss:

I swear that I am the president of the corporation making the foregoing report, and that the foregoing report and answers therein made are true and correct.

(Sgd.)

THOMAS PREHN.

Subscribed and sworn to before me this 11th day of December, 1917.

[SEAL.]

(Sgd.)

JOHN SCHMIDT,
Notary Public of N. J.

489 *Instructions for Printer Regarding Printing of Defendants'
Exhibit Q-1.*

The spaces in the report need not be left blank in the printing, and the unfilled blank affidavits at the end need not be included in the printing.

The page of endorsements on the back need not be printed.

490 DEFENDANTS' EXHIBIT Q-1.

Alien Property Custodian, Received Dec. 5, 1917. Noted ———.
Date ———, Ansd. ———, Date ———.

A. P. C. Form No. 100.

File No. ———.

Alien Property Custodian.

Report of Property and Indebtedness under Section 7 (a), Trading with the Enemy Act. (General.)

Penalty.

Failure to make this report to the Alien Property Custodian as provided by law (see extract of act below) is punishable by imprisonment for not more than ten years or fine of not more than ten thousand dollars, or both.

The time for the filing of any report which under the act was required to be filed on or before November 5, 1917, has been extended to and including December 5, 1917.

Pursuant to the provisions of section 7 (a) of the "Trading with the enemy Act," the Alien Property Custodian hereby requires a written statement under oath containing all the particulars specified in this form.

Instructions.

(1) Read carefully all of this report form, note the grouping of the several classes of property, and read instructions before beginning to make report. Write legibly, using typewriter where possible.

(2) Person.—The word "person" is defined by section 2 of the act as follows:

"The word 'person,' as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic."

(3) The person whose property (including indebtedness owing him) must be reported.—Report must be made of the property or indebtedness to any person who, by the "Trading with the enemy Act," is defined as an enemy or ally of enemy or whom the person making this report may have reasonable cause to believe to be an enemy or ally of enemy.

(4) Enemy.—For the purpose of this report, the word "enemy," as defined by section 2 of the act, includes the following:

"(a) Any individual partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof."

Ally of enemy.—For the purpose of this report, the words "ally of enemy," as defined by section 2 of the act, include the following:

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof."

(5) If a person, even an American citizen, is resident within the territory of an enemy or ally of enemy, including that occupied by its military and naval forces, his property must be reported.

(6) The term "enemy" or "ally of enemy," as used in this form, includes any person whom you may have reasonable cause to believe to be an enemy or ally of enemy.

(7) On October 6, 1917, the United States was at war with Germany; the allies of Germany were Austria-Hungary, Bulgaria, and Turkey.

(8) Who must make this report, and what must be reported.—This report must be made by the persons described in the following paragraph of the act:

"Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this act, or within thirty days after such debt shall become due, report the fact to the alien property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen."

The Alien Property Custodian, acting under the authority vested in him by the President, including all power and authority to require lists and reports, has issued an order requiring a report of all property so held, and of all debts so owed, on February 3, 1917. If on February 3, 1917, the person reporting so held any property of, for, or on behalf of the person named in division B hereof, or was indebted in any way to such person, an additional report as of February 3, 1917, must be made, unless all such property and indebtedness are included in this report.

(9) The following reports, covered by special forms, are not to be included herein:

(a) Lists required to be filed by corporations incorporated within the United States, unincorporated associations, companies, or trustees within the United States, issuing shares or certificates representing beneficial interests, as to the enemy or ally of enemy officers, directors, or stockholders thereof. (A. P. C. Form No. 101.)

(b) Reports by insurance companies as to all policies of insurance of value, in which an enemy or ally of enemy has any interest. (A. P. C. Form No. 102.)

(c) Reports by banking institutions having no property on hand of an enemy or ally of enemy or owing no debt to an enemy or ally of enemy, except an open bank account. (A. P. C. Form No. 103.)

(d) Reports by corporations or persons leasing safe deposit boxes to enemy or ally of enemy or to lessees in trust for enemy or ally of enemy and to which the lessors have not access. (A. P. C. Form No. 104.)

(e) Executors, administrators, guardians, trustees, receivers, and others acting in a like fiduciary or representative capacity, in respect of property in which an enemy or ally of enemy has an interest. (A. P. C. Form No. 105.)

491 3/4/18 Demand made. A. B. D. T. B.

(10) Miscellaneous.—Make separate reports on separate blanks for each person whose property (including indebtedness owing him) is being reported.

(11) Do not leave any schedule or question unanswered. If a negative answer is intended, write "None" or "No."

(12) If the space provided in any schedule in this form is inadequate, a complete schedule in like form and bearing the corresponding schedule number must be prepared, signed, attached to this report, and made a part hereof. Do not put a part of the information in the space on this form and part on an attached sheet.

(13) If the person making the report holds any of the property mentioned in any of the schedules jointly with others, this fact must be stated in such schedules, with the names and addresses of the joint holders or custodians. Persons holding property jointly may report jointly.

To Alien Property Custodian,
Washington, D. C.

The undersigned, in pursuance of the act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, hereby makes the following written statement containing the particulars required by the Alien Property Custodian (except as reported on special forms) of all the property, beneficial or otherwise, which the undersigned on October 6, 1917, held, had, or had custody or control of, or now holds, has, or has custody or control of, alone or jointly with others, of, for, or on behalf of the herein-named enemy or ally of enemy, or person whom the undersigned may have reasonable cause to believe to be an enemy or ally of enemy; and of all indebtedness owing on or after October 6, 1917, by the undersigned to such enemy or ally of enemy or person whom the undersigned may have reasonable cause to believe to be an enemy or ally of enemy, to wit:

A.

Name of individual, partnership, association, or corporation making report: Max W. Stohr.

Address: 136 Pennington Avenue, Passaic, New Jersey.
(No.) (Street.) (City.) (County.) (State.)

B.

Name of enemy or ally of enemy or person whom person reporting may have reasonable cause to believe to be an enemy or ally of enemy whose property (including indebtedness owing him) is being reported: Eduard Stohr.

Last known residence or address Leipzig, Germany.

(Give the residence or address of the person whose property is being reported, as the same is registered or recorded on the books of the person reporting, together with any information showing any subsequent change of residence or address.)

Of what country (if known to person reporting) is person whose property is being reported a subject or citizen? Germany.

SCHEDULE 1.

Money, Checks, and Drafts Payable on Demand.

This schedule includes gold, silver, currency, checks, and drafts payable on demand. (Time drafts and bank accounts should be included under Schedule 8.)

Money § None.

Give detailed description, date, bank, drawer or maker, payee, endorser, number of check and amount, place of payment, and the capacity in which the same is held. If any check or draft scheduled is for any reason worth less than its par value, this fact should be stated in this schedule.

Checks None.

Drafts payable on demand None.

SCHEDULE 2.

Stocks and Bonds.

This schedule includes financial securities, such as certificates of stock, issues of notes and debentures of corporations, associations, companies, or trustees, including certificates representing beneficial interests; bonds and coupons of corporations, countries, states, counties, cities, and subdivisions thereof; and all financial securities commonly dealt in by bankers brokers, and investment houses.

(The list of officers, directors, and stockholders of corporations and unincorporated associations or companies or trustees issuing

shares or certificates representing beneficial interests, required by the first two paragraphs of section 7 (a) of "Trading with the enemy Act," should be made on a separate form (A. P. C. Form No. 101), which will be furnished on request, and the list there called for should not be included in this report.)

Give in detail name of the corporation or person issuing stock, shares, or certificates representing beneficial interests, bonds, or securities, and class or issue thereof, record or registered owner, par value or principal amount of same, number of shares (if any), and serial numbers of all instruments; state where the same are located, and estimated market value of each item.

Voting Trust Certificate No. 1 for 1,875 shares of stock of Stoehr & Sons Inc., a New York corporation of 200 Fifth Avenue. The certificate is in my name and possession as trustee, but I have no beneficial interest in the same, but same belongs to said Eduard Stoehr. Par value \$100 a share. As the stock is not in the market cannot give market value but estimate its value at about \$350 per share.

SCHEDULE 3.

Equity of Enemy or Ally of Enemy in Mortgaged or Pledged Property and Interest of Enemy or Ally of Enemy in Contracts Mentioned in Section 8 (a).

This schedule includes the property and contracts mentioned in section 8 (a) of "Trading with the enemy Act," which provides: "That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally."

Describe in detail each item; the nature, value, and location of the property; the nature, amount, and maturity of indebtedness; give dates of all instruments, amounts, due dates and parties to the same; and attach copies of all contracts described in section 8 (a) and of all instruments, if any, creating the mortgage, pledge, lien, or other

right in the nature of security in property; and state estimated value of equity of enemy or ally of enemy therein.

None.

SCHEDULE 4.

Warehouse Receipts and Bills of Lading.

This schedule includes warehouse receipts, bills of lading issued by any carrier, trust receipts, bills of sale, and other evidences of the title or ownership of tangible personal property not in the actual possession of the person reporting.

Give in detail date of instrument, name of person issuing the same, description, location, and estimated market value of the property covered, and nature of interest in instrument or property of person named in Division B hereof.

None.

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SCHEDULE 5.

Goods and Merchandise.

This schedule includes goods, wares, merchandise, chattels, stocks on hand, and tangible personal property in the custody or control of the person reporting, not included in any of the preceding schedules of this report; also ships, or interests in ships, and goods on ships, in which the person named in Division B hereof has any interest.

Describe in detail the property, quantity, location, and the estimated market value thereof.

None.

SCHEDULE 6.

Real Estate Mortgages.

This schedule includes all real estate mortgages where the obligation is held by an enemy or ally of enemy and is secured on specific real estate; all vendors' sales agreements and all land contracts where enemy or ally of enemy is vendor and purchase price of real estate sold by enemy or ally of enemy remains unpaid in whole or in part.

Give full description of indebtedness secured by any mortgage or deed of trust on real estate, together with description of property on which indebtedness is a lien; give amount and maturity of indebtedness, interest, payment dates, rate of interest and copies of all vendors' sales agreements or land contracts, together with statement of amount due and unpaid thereon by purchaser. Also give estimated market value of mortgage and real estate.

None.

SCHEDULE 7.

Real Estate.

This schedule includes real estate, leaseholds, ground rents, options, and contracts relating to real estate, together with rents accrued or to accrue.

Give description of real estate, location, grantor and grantee in deed or other instrument, date of instrument and where recorded; estate held, whether fee simple or otherwise; description of improvements, estimated market value of land and improvements separately; amount of encumbrances, and probable annual net income; names and addresses of tenants, name and address of agent collecting rents; rents accrued and to accrue.

None.

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SCHEDULE 8.

Negotiable Instruments and Debts.

This schedule includes all indebtedness of person making this report to person named in Division B hereof; and all evidences of debt not included in any of the preceding schedules of this report, such as promissory notes, bills of exchange, time drafts, certificates of deposit, bank accounts or deposits, trade acceptances, royalties (other than royalties on patents, trademarks or copyrights), book accounts, accounts payable, judgments, contracts and any debt or obligation not of the character hereinbefore scheduled, in the custody or control of the person making this report, in which the person named in Division B hereof has or may have an interest. All debts, whether due or not, must be reported. Any unpaid instrument owing by you, which to your knowledge was at any time payable to or held by the person named in Division B hereof, must be reported, together with the name and address of present payee or holder, if known.

(1) Describe in detail each item of indebtedness of person reporting, to person named in Division B hereof. Give date of any instruments evidencing such debt or debts, together with date of maturity, rate of interest, date to which interest is paid, place of payment, principal amount unpaid and estimated value thereof. State names of joint makers, if any, and name all parties to instruments or obligations, and if indebtedness is secured in any way, describe the security and state its estimated value.

None.

(2) Describe in detail each evidence of indebtedness held by person reporting, or in his custody or control, of for, or in behalf of person named in Division B hereof; give nature of same, original principal, amount thereof unpaid, rate of interest and to what date paid, when principal and interest due, and estimated value thereof; give

dates of all instruments, amounts, due dates, and parties to or on the same, together with any security held for the payment of any of the obligations and estimated value thereof. Give name of court and court reference to any judgments, and book and page and office where recorded of any recorded instrument.

None.

SCHEDULE 9.

Patents, Trade-Marks, and Copyrights.

This schedule includes all indebtedness incurred under agreements existing prior to the enactment of "Trading with the enemy Act," October 6, 1917, where the holder of the patent, trade-mark, or copyright is the person named in Division B hereof, and does not include sums owing pursuant to any license issued under that act for the use of patents, trade-marks, and copyrights.

Describe the patent, trade-mark, or copyright; give the commonly accepted name thereof, the serial number thereof, and copy of the agreement under which the same is being used, together with a statement of all royalties due or unpaid.

None.

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SCHEDULE 10.

Insurance Policies.

This schedule includes life, fire, accident, marine, and other policies of insurance in which the person named in Division B hereof is the insured or the beneficiary and which policies are in the custody or control of the person reporting. Insurance companies should report on A. P. C. Form No. 102 policies issued by them, and they should not include such policies herein. Any debt owing by way of premium upon policies of insurance or reinsurance to the person named in Division B hereof should be reported under Schedule 8 as a debt.

Describe in detail, giving name of company, number of policy, amount thereof, the description and location of the person or property insured, name of the beneficiary, address of the insured and beneficiary if known, amount due on the policy, if any, to person named in Division B hereof, the liens outstanding on the policy, if any, and also whether the policy is in force and whether any arrangement is in existence for the payment of any premium due or to become due thereon.

None.

SCHEDULE 11.

Safe Deposit Boxes.

This schedule includes all cases where the person reporting has the custody or control of any safe-deposit box in which, or in any of the

contents of which, the person named in Division B hereof has any interest.

Safe-deposit boxes leased by a safe-deposit company or person to enemies or allies of enemy or to lessees in trust for enemies or allies of enemy and to which the lessors have not access, should be reported on A. P. C. Form No. 104.

Give name and address of corporation from which safe-deposit box is rented and number and location of the box. The contents of the box in which the person named in Division B hereof has any interest should be reported in the several appropriate schedules of this report.

None.

SCHEDULE 12.

Report in This Schedule All Other Property, Real, Personal, or Mixed, and Assets and Claims of Every Kind and Description Not Otherwise Designated in the Foregoing Schedules, and Not Required to be Separately Reported, in Which the Person Named in Division B Hereof Has or May Have Any Right, Title, or Interest.

List of above property, with full description, location, terms, amounts, and estimated market value of each item.

None.

96 & 497 Note Attached to Report by M. W. Stoehr to Alien Property Custodian.

Stoehr & Sons, Inc., is a New York Corporation and was organized on February 19, 1917, to take over and become the successor to Stoehr & Sons, a partnership, of No. 200 Fifth Avenue, Borough of Manhattan, City of New York, consisting of H. E. Stoehr, of New York City, M. W. Stoehr, of Passaic, New Jersey, Eduard Stoehr and Georg Stoehr, both of Leipzig, Germany. The capital stock of the Company was issued to the four partners in the same proportion as their interest in the partnership and the indebtedness of the partnership to Eduard Stoehr, Georg Stoehr and Stoehr & Company, a corporation of Leipzig, Germany (which is reported by Stoehr & Sons, Inc., in separate reports to the Alien Property Custodian) became the indebtedness of said Stoehr & Sons, Inc. the New York corporation, all indebtedness of the partnership having been assumed by said last mentioned corporation. All the directors and officers of said New York corporation are residents of the United States.

MAX W. STOEHR.

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DEFENDANTS' EXHIBIT R-1.

Defendants' Exhibit R-1 was upon the same form, A. P. C. Form 100, of the Alien Property Custodian as Defendants' Exhibit Q-1, but it dealt with the property held for Georg Stoehr of Leipzig, Ger-

many. And in place of the reference to voting trust certificate No. 1, as set forth in Exhibit Q-1, it contained the following:

"Voting Trust Certificate No. 3 for 222.21 shares of stock of Stoehr & Sons, Inc., a New York corporation, of 200 Fifth Avenue. The certificate is in my name and possession as trustee, but I have no beneficial interest in the same, but same belongs to said Georg Stoehr. Par value \$100 a share. As the stock is not in the market, cannot give market value but estimate its value at about \$350. per share."

Said report was sworn to by Max W. Stoehr, December 3, 1917, and was stamped in the office of the Alien Property Custodian as follows: "Alien Property Custodian. Received Dec. 5, 1917."

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DEFENDANTS' EXHIBIT S-1.

Executive Order Vesting Power and Authority in Designated Officers and Making Rules and Regulations under Trading with the Enemy Act and Title VII of the Act Approved June 15, 1917.

By virtue of the authority vested in me by "An act to define, regulate, and punish trading with the enemy and for other purposes," approved October 6, 1917, and by Title VII of the act approved June 15, 1917, entitled "An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States and for other purposes" (hereinafter designated as the espionage act), I hereby make the following orders and rules and regulations:

503 & 504

Alien Property Custodian.

XXIX. I hereby vest in an alien-property custodian, to be hereafter appointed, the executive administration of all the provisions of section 7 (a), section 7 (c), and section 7 (d) of the trading with the enemy act, including all power and authority to require lists and reports, and to extend the time for filing the same, conferred upon the President by the provisions of said section 7 (a), and including the power and authority conferred upon the President by the provisions of said section 7 (c), to require the conveyance, transfer, assignment, delivery or payment to himself, at such time and in such manner as he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy, not holding a license granted under the provisions of the trading with the enemy act, which, after investigation, said alien-property custodian shall determine is so owing, or so belongs, or is so held.

XXX. Any person who desires to make conveyance, transfer,

payment, assignment or delivery, under the provisions of section 7 (d) of the trading with the enemy act, to the alien-property custodian of any money or other property owing to or held for, by or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted as provided in the trading with the enemy act, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, shall file application with the alien-property custodian for consent and permit to so convey, transfer, assign, deliver or pay such money or other property to him, and said alien-property custodian is hereby authorized to exercise the power and authority conferred upon the President by the provisions of said section 7 (d) to consent and to issue permit upon such terms and conditions as are not inconsistent with law, or to withhold or refuse the same.

XXXI. I further vest in the alien-property custodian the executive administration of all the provisions of section 8 (a), section 8 (b), and section 9 of the trading with the enemy act, so far as said sections relate to the powers and duties of said alien-property custodian.

XXXII. I vest in the Attorney General all power and authority conferred upon the President by the provisions of section 9 of the trading with the enemy act.

XXXIII. The alien-property custodian, to be hereafter appointed, is hereby authorized to take all such measures as may be necessary or expedient, and not inconsistent with law, to administer the powers hereby conferred; and he shall further have the power and authority to make such rules and regulations not inconsistent with law as may be necessary and proper to carry out the provisions of said section 7 (a), section 7 (c), section 7 (d), section 8 (a), and section 8 (b), conferred upon the President by the provisions thereof and by the provisions of section 5 (a), said rules and regulations to be duly approved by the Attorney General.

● XXXIV. The alien-property custodian, to be hereafter appointed, shall, "under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe," have administration of all moneys (including checks and drafts payable on demand) and of all property, other than money which shall come into his possession in pursuance of the provisions of the trading with the enemy act, in accordance with the provisions of section 6, section 10, and section 12 thereof.

WOODROW WILSON.

The White House,
12 October, 1917.

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Executive Order.

[No. 2801.]

By virtue of the authority vested in me by an Act to define, regulate, and punish trading with the enemy, approved October 6, 1917, known as the Trading with the Enemy Act, I hereby make the following orders, rules and regulations:

1. Paragraph XXX of the Executive Order dated October 12, 1917, and made by me pursuant to said Act of Congress, is hereby revoked; and in place thereof it is hereby ordered:

XXX. Any person not an enemy, or ally of enemy, who owes to, or holds for or on account of, or on behalf of, or for the benefit of, an enemy or an ally of enemy, not holding a license granted by or in the exercise of the power and authority of the President under the provisions of said Trading with the Enemy Act any money or other property, or to whom any obligation or form of liability to such enemy, or ally of enemy, is presented for payment, may, having first obtained the consent of the Alien Property Custodian, pay, convey, transfer, assign, or deliver, to or upon the order of the Alien Property Custodian, said money or other property, with like effect as if such payment, conveyance, transfer, assignment or delivery were made in obedience to requirement pursuant to the provisions of Section 7, subsection (c), of said Trading with the Enemy Act.

2. Paragraph XXXI of said Executive Order dated October 12, 1917, is hereby revoked; and in place thereof it is hereby ordered:

XXXI. I hereby vest in the Alien Property Custodian the executive administration of all provisions of Section 8 (a) and Section 8 (b) of the Trading with the Enemy Act, including the power, authority and duty conferred or imposed upon the President by the provisions of said Section 8 (a), and the notice therein required to be given to the President shall be given to the Alien Property Custodian.

WOODROW WILSON.

The White House,
5 February, 1918.

Executive Order.

An Executive Order prescribing rules and regulations respecting the exercise of the powers and authority and the performance of the duties of the Alien Property Custodian under the "Trading with the Enemy Act" and prior Executive Orders pursuant thereto, and respecting the deposit and investment of moneys received by or for the account of the Alien Property Custodian.

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act," I hereby make the following orders, rules and regulations.

(1) Definitions.

(a) The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

(b) The word "enemy," as used herein (including subsequent definitions) shall be deemed to mean either an "enemy" or "ally of enemy," as the case may be.

(c) The words "right," "title," "interest," "estate," "power," and "authority" of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy.

(d) Any requirement made by the Alien Property custodian pursuant to Section 7, subsection "c" of the "Trading with the enemy Act" may be known as and called a demand and will be hereinafter referred to as a demand.

(2) Demands Pursuant to Section 7, Subsection "c."

(a) The Alien Property Custodian may make demand for the conveyance, transfer, assignment, delivery, and payment of any money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy not holding a license granted by me or in the exercise of my power and authority, which the Alien Property Custodian after investigation, shall determine is so owing or so belongs or is so held, together with every right, title, interest, and estate of the enemy in and to such money or other property and every power and authority of the

enemy thereover, including (but without limiting the generality of the foregoing) the power and authority to affirm, ratify, approve, revoke, repudiate or disapprove, in whole or in part, and at any time or times, any power, agency, trust or other relation at the time existing, and also any act or omission theretofore done in the exercise of or pursuant to any power, agency, trust or other relation which the enemy could or might lawfully revoke, repudiate, disaffirm, ratify or approve, and also including (but without limiting the generality of the foregoing) the power and authority to
507 direct, supervise, and control the future exercise of any power, agency, trust or other relation over such money or other property to the extent that the enemy could or might lawfully direct, supervise, and control the same. Or the Alien Property Custodian may qualify or limit any such demand in such manner and to such extent as he may in any case see fit and (without limiting the generality of the power to qualify and limit demands) he may in any case demand all or only such power and authority over the money or other property as he may see fit without demanding any conveyance, transfer, assignment, delivery or payment of such money or other property or any other right, title, interest, or estate therein or thereto except such as may be included within the power and authority demanded in the particular case over such money or other property.

A demand for the conveyance, transfer, assignment, delivery and payment of money or other property unless expressly qualified or limited shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover.

(b) Notice of any demand made by the Alien Property Custodian may be given to any person who, alone or jointly with others, may hold or have the custody or control of or may be exercising any right, power, or authority in or over or may be performing any duty concerning the money or other property mentioned in the demand; and, in any notice given, the Alien Property Custodian may require of the person notified the performance of any act or thing within the power of the person notified which may be necessary or proper to make the demand fully effective, or to establish proper acknowledgment, recognition, or evidence of the right, title, interest, and estate of the Alien Property Custodian in and to such money or other property and of the power and authority of the Alien Property Custodian thereover, and it shall be the duty of any person so notified to perform any act or thing so required. Such notice may be given in person or by mail.

(c) When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may there-

upon proceed to administer such money and other property in accordance with the provisions of the "Trading with the enemy Act" and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian.

(3) Powers of Administration.

(a) The Alien Property Custodian may appoint and clothe with necessary power and authority such agents, bailees, and attorneys in fact as he may find to be necessary or proper to carry out the provisions of the "Trading with the enemy Act" and the Executive orders, rules, and regulations heretofore, hereby, or hereafter made, and prescribe the duties and fix the compensation of such agents, bailees, and attorneys in fact; and any depository designated by the Alien Property Custodian may be appointed as such agent, bailee or attorney in fact. And the Alien Property Custodian may require bonds of such agents, bailees and attorneys in fact and fix the penalty and conditions thereof.

(b) The Alien Property Custodian may pay all reasonable and proper expenses which may be incurred in or about securing possession or control of money or other property and in or about
508 collecting dividends interest and other income therefrom, and in otherwise protecting and administering the same. So far as may be, all such expenses shall be paid out of, and in any event recorded as a charge against, the estate to which such money or other property belongs.

(c) The Alien Property Custodian may authorize depositories designated by him and agents, bailees, and attorneys in fact appointed by him to deduct all expenses authorized or approved by the Alien Property Custodian, including the compensation of such depositories, agents, bailees, and attorneys in fact, from any moneys collected by them and the payment by them to the Alien Property Custodian or into the Treasury of the United States of the net amount remaining in their hands.

(d) The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to and over corporate stock, shares or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company or trustee which issued such stock, shares or certificates, to the holders or owners of similar stock, shares or certificates, (2) the right to exercise all voting power appertaining to such stock, shares or certificates, and (3) the right to receive all subscription rights, dividends and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares or certificates, regardless of whether or not such stock, shares or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock,

shares or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company or trustee issuing the same.

The Alien Property Custodian may nominate persons who may, when duly elected or appointed, serve as directors, officers or employees of any corporation whose corporate stock or shares, in whole or in part, are owing or belonging to, or are held for, by, on account of, or on behalf of or for the benefit of an enemy.

The Alien Property Custodian may demand the transfer of corporate stock, shares or certificates representing beneficial interests to be made upon the books of any corporation, unincorporated association, company or trustee, issuing the same, into the name of the Alien Property Custodian or into the name of any depository designated by the Alien Property Custodian for the account of the Alien Property Custodian, or, in the case of corporate stock or shares, into the name of any other person for the purpose of qualifying such person to serve as a director of the corporation issuing such corporate stock or shares; and it shall be the duty of any corporation, unincorporated association, company, or trustee to comply with such demand when accompanied by the presentation of the certificates which represent such corporate stock, shares or beneficial interests. Provided that corporate stock or shares transferred into the name of any other person than the Alien Property Custodian or a designated depository shall be indorsed by such person in blank and delivered to and held by the Alien Property Custodian or by a duly designated depository.

(e) In respect of moneys, accounts payable, credits, notes or other obligations owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, whether the payment or delivery or the mere transfer and assignment thereof be demanded, the Alien Property Custodian may exercise discretion in enforcing payment, granting indulgence, making extension or accepting security, and in exercising any other right, power or authority of the enemy.

(f) The Alien Property Custodian may sell and deliver any commodity or other tangible property which may be perishable or which may in the preservation thereof involve expense. And the Alien

Property Custodian may sell and deliver any rights appurtenant to the ownership of corporate stock, shares or certificates of beneficial interests in cases where such rights would lapse unless exercised within a limited time. The Alien Property Custodian may manage, conduct, and operate any business belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy in cases where the continuation of such business may seem to be necessary to prevent waste or to protect such business. And the Alien Property Custodian may sell or otherwise dispose of such business or any part thereof, or the assets or any part thereof, whenever such sale shall seem to be necessary to prevent waste or to protect such business. And in the management, operation, conduct,

sale or other disposition of such business the Alien Property Custodian may exercise every right, power and authority of the enemy.

(g) In cases of liquidation of an estate belonging to a partnership, association or unincorporated company in which an enemy may have an interest, the Alien Property Custodian may exercise every right, power, and authority of the enemy, including the right, power, and authority to sell the interest of the enemy in the event such sale seems necessary to prevent waste or to protect such interest.

(h) All sales made by the Alien Property Custodian may be conducted privately or publicly, with or without advertisement, and on such terms and conditions as to the Alien Property Custodian may seem proper.

In all cases of sales made by the Alien Property Custodian, all reasonable expenses incurred in and about such sales shall be deducted from the proceeds and the net amount remaining paid into the Treasury of the United States.

(i) The Alien Property Custodian is authorized to exercise any power conferred upon him by any license issued by me or in the exercise of the power and authority conferred upon me under the "Trading with the enemy Act" wherever such license involves any act or thing concerning any money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy.

(4) Statutory Powers of the Alien Property Custodian.

Nothing herein contained is intended, nor shall anything herein contained be construed, to limit the powers conferred upon the Alien Property Custodian by the "Trading with the enemy Act."

(5) Deposit and Investment of Moneys Received by the Alien Property Custodian.

There shall be deposited in the Treasury of the United States, through the office of the Secretary of the Treasury—

(a) Any and all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to the "Trading with the enemy Act";

(b) Any and all moneys (including checks and drafts payable on demand) collected or received by the Alien Property Custodian, as dividends or interest or income that may become due upon any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property held by the Alien Property Custodian or by any depositary or depositaries designated as provided in said Act for the account of the Alien Property Custodian.

(c) Any and all moneys collected as the proceeds of any and all maturing obligations held by the Alien Property Custodian or by any such depositary or depositaries for the account of the Alien Property Custodian; and

510 (d) Any and all moneys paid to or received by the Alien Property Custodian as the proceeds of any sale or sales, made at any time pursuant to such rules and regulations as the President shall prescribe, of any and all property or rights which shall come into the possession of the Alien Property Custodian in pursuance of the provisions of said Act;

Provided, however, that the Alien Property Custodian may fix stated periods, not longer than quarter-yearly, for accounting by depositaries, agents, bailees, and attorneys in fact of all moneys received by them, and for the payment thereof by such depositaries, agents, bailees, and attorneys in fact to the Alien Property Custodian, who shall forthwith pay the same into the Treasury of the United States, as provided above, and that checks and drafts payable on demand received by designated depositaries in payment of dividends, interest and income from property held by or for the account of the Alien Property Custodian may be collected by such depositaries for the account of the Alien Property Custodian, but that all other checks and drafts payable on demand shall be forthwith deposited by the Alien Property Custodian in the Treasury of the United States, as provided above.

Any and all moneys so deposited in the Treasury of the United States, as herein provided, as well as all moneys, if any, which may be paid to the Treasurer of the United States, as provided in Section 12 of said Act, and all interest, dividends or other income, if any, in respect of any property conveyed, transferred, assigned or delivered to the Treasurer of the United States, as provided in said Section 12, shall be credited by the Treasurer of the United States to the Secretary of the Treasury "for account of the Alien Property Custodian."

Any and all moneys so deposited in the Treasury of the United States, as herein provided, together with any interest or income received from the investment thereof, shall be subject to withdrawal by the Secretary of the Treasury for the purpose of making any payment or payments pursuant to the provisions of said Act, and, until so withdrawn, may be invested and reinvested, from time to time, by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness. The bonds and certificates of indebtedness, in which such moneys shall be so invested, shall be held by the Secretary of the Treasury for account of the Alien Property Custodian, subject to the provisions hereof and of said Act and to such further orders, rules or regulations as may, from time to time, be prescribed by me.

(6) Amendments and Modifications of Prior Executive Orders.

All other Executive orders heretofore made are hereby amended and modified to such extent as may be necessary to conform with the provisions hereof.

WOODROW WILSON.

The White House,
26 February, 1918.

*Executive Order.***An Executive Order Prescribing Additional Rules and Regulations and Making Certain Determinations Respecting the Exercise of the Powers and Authority and the Performance of the Duties of the Alien Property Custodian.**

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading With the Enemy Act," as amended by "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses and for other purposes," approved March 28, 1918, I hereby make the following orders, rules and regulations, and determinations.

Definitions.

1. The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

2. The word "enemy," as used herein, shall be deemed to mean either an "enemy" or "ally of enemy," as the case may be.

Powers of Management and Administration, Including Sale or Other Disposition.

The Alien Property Custodian shall have power, and he is authorized and directed, to hold, manage, administer, protect, preserve, control and sell or otherwise dispose of, in accordance with the following rules and regulations, any and all property other than money which has been or shall be conveyed, transferred, assigned, delivered, and/or paid over to him pursuant to the provisions of the Trading With the Enemy Act as amended and the Executive proclamations and orders issued pursuant thereto, or which has been or shall be required so to be conveyed, transferred, assigned, delivered and/or paid over to him.

1. The Alien Property Custodian shall have the power and authority to do any and all things reasonable and proper in or about the custody, management, administration, protection, preservation and control of any such property according to the nature and character of the property and the attendant circumstances, including (but without limiting the generality of the foregoing) the power and authority to collect all bills, notes, accounts, dividends, interest, rents, royalties, annuities and other receivables, and income and profits and accumulations and distributions of principal or income; to pay all rents, royalties, interest and other accounts and liens or charges; to make repairs, additions and alterations to property, whether real or

personal; to rent, lease or otherwise grant the use or right to use or occupy property of any kind; to insure property against loss, and to cancel or surrender insurance policies and collect return premiums and surrender values, and to do any other act or thing with respect to insurance or insurance policies; to grant by lease, license or otherwise, the right to use or other rights under or in respect of patents, copyrights, trade marks, trade secrets and other similar rights; to vote in person or by proxy shares of stock or other beneficial interest in corporations, unincorporated associations, companies or trusts upon any questions at all times and upon all matters upon which any owner of such stock or other beneficial interest shall have the right to vote, including the power and authority to vote for or against and to take part in any sale, dissolution, consolidation, amalgamation or reorganization of any sort, of any such corporation, unincorporated association, company or trust, or of its assets of any part thereof, and to exercise any rights or privileges that may be or become appurtenant to the ownership of such stock or other beneficial interest with like force and effect and under like circumstances in all respects as though the absolute owner thereof; to give any notices and file any papers or writings of any kind, proper or necessary for the creation, perfection, protection, liquidation or otherwise in respect of any claims, demands, choses-in-action or other rights of any kind, and to settle, compromise and adjust claims, demands and choses-in-action; to intervene in any suit or proceeding and to file and maintain claims, demands and suits of all kinds in or before, any court, board, commission or other body; to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depository for him, including expenses that may be incurred in or about securing possession, custody or control of any such property, and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property by any body politic; provided that this shall not be construed to require the payment of any stamp or other taxes upon or on account of conveyance, transfer, assignment or delivery of property to the Alien Property Custodian or to any agent, attorney, bailee, nominee or depository for him; and provided further that this shall not in any way affect the power of the Commissioner of Internal Revenue or any regulations made by him or under his authority.

2. Whenever any such money or other property or any part or parcel thereof is or shall be subject to any claim of lien, charge or incumbrance, or is or shall be held or retained adversely to the Alien Property Custodian or to any requirement with respect to such money or other property made by him, the Alien Property Custodian may compromise or settle such controversy and pay any such claim in any way that he shall decide to be proper and as though he were the absolute owner of the money or other property involved; and he shall have the power and authority to make any payment or pay-

ments necessary and to execute and deliver any instruments or writings necessary and proper to effect or evidence the same.

3. Whenever any such property or any part or parcel thereof shall be used or employed in the conduct or other operation of a mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian, in addition to the rights, powers and authority elsewhere herein conferred upon him, in respect of the property so used or employed, may continue the conduct or other operation of such business or undertaking; and for such purpose he shall have the right, power and authority to employ and discharge agents, attorneys, servants and other employees; to buy and sell supplies, materials and commodities required or necessary for the conduct of such business, or dealt in or handled thereby, or mined, produced, manufactured or created by it; to take out insurance; to require money owing by banks, trust companies or other depositaries on special or general deposit to be paid to him or upon his order; to collect debts and other receivables owing to the said business or undertaking or to the former enemy owner or owners thereof and created out of or by the operation of such business or undertaking, and also debts, accounts and other receivables accruing or arising out of the conduct or other operation of such business or undertaking, by the Alien Property Custodian or under his direction or authority; to pay the wages and salaries of agents, attorneys, servants and other employees, and rents, royalties, and other current accounts and liabilities; to intervene in any suit or action pending in any court or before any board, commission or other body, in which such business or undertaking or any of the property or assets thereof shall be involved or concerned and to prosecute or defend, as the case may be; to file, prosecute and maintain in the name of the Alien Property Custodian or otherwise as may be proper, any claim or suit arising out of or based upon transactions had prior or subsequent to the time when such property was conveyed, transferred, assigned, delivered and/or paid over to the Alien Property Custodian or was required so to be, but growing out of the conduct or operation of such business or undertaking or any other use, custody, control or management of any property or assets thereof; and generally to manage, administer, preserve, conduct, operate and control such business or undertaking and any or all parts or parcels and assets thereof as though the absolute owner, either in the name of the Alien Property Custodian or otherwise as he shall determine.

4. The Alien Property Custodian may appoint agents, attorneys, bailees, depositaries and/or managers who, under his direction and control and within the limits of the authority conferred by him, shall be authorized and directed to hold, manage, administer, protect, preserve and otherwise control property conveyed, transferred, assigned, delivered or paid over to him or required so to be, or any part or parcel thereof; and they may be authorized and directed to continue the conduct or other operation of any going business or

other undertaking which the Alien Property Custodian himself, as provided elsewhere herein, could continue. Such agents, attorneys, bailees, depositaries and managers shall have and exercise the rights, powers and authority which shall be from time to time conferred upon him or them by the Alien Property Custodian; and such rights, powers and authority may be enlarged, restricted or revoked by the Alien Property Custodian at any time and without giving any notice or reason therefor; and the remuneration of all such agents, attorneys, bailees, depositaries and managers shall be fixed by the Alien Property Custodian and may be increased or reduced at any time.

5. The Alien Property Custodian shall have full power and discretion with respect to property to be sold, and may sell any property or properties as an entirety or in such groups or parcels and at such time or times as he shall determine, and without reference to the previous enemy or ally of enemy ownership thereof. Whenever any such property shall be used or employed in the conduct or other operation of any mine, plant, factory, railroad or other transportation facility, mercantile establishment or any sort of going business or undertaking, the Alien Property Custodian may sell such property as a going business or undertaking and may include not only the tangible property but any and all patents, trade marks, trade names, good will and other intangible rights and assets; and any number of such going businesses or undertakings may be sold together as above specified.

6. Whereas said Trading With the Enemy Act as amended provides that "any property sold, except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder, after public advertisement of the time and place of sale, which shall be where the property or a major portion thereof is situated, unless the President, stating the reasons therefore in the public interest, shall otherwise determine,"

Now therefore I do thus determine otherwise as follows:

(a) Shares of stock or other beneficial interest in a corporation, unincorporated association, company or trust, and claims, receivables and intangibles of all kinds may be advertised and sold whenever the Alien Property Custodian shall determine; and it shall be immaterial whether such shares of stock or other beneficial
514 interest and such claims, receivables and intangibles be represented or evidenced by certificates or instruments or writings of any kind, and whether the Alien Property Custodian shall or shall not have possession or control thereof in the event that the same shall be thus represented or evidenced.

(b) Any corporation incorporated within and under the authority of the laws of any state or territory of the United States or of any of its insular possessions shall be allowed to bid at any sale of any such property, but the Alien Property Custodian shall have the right to exclude from bidding at any such sale and / or from purchasing or otherwise acquiring property from him directly or in-

directly, any corporation which he shall after investigation determine to be controlled, managed or operated wholly or mainly by or for the account or benefit of a person or persons not a citizen or citizens of the United States or of its insular possessions.

(c) The Alien Property Custodian, upon order of the President stating the reasons therefor, shall have the right to reject all bids for any property thus sold and to resell such property at public sale or otherwise as the President may direct; but the Alien Property Custodian may at or before any sale, by public announcement or by publication, fix a period after the expiration of which the right thus to reject all bids and to resell such property will not be exercised.

My reasons for the foregoing determinations in the public interest are:

(a) That such sales may be made at the place of favorable demand and under the best circumstances to secure the market price therefor.

(b) That bidders able to purchase and pay for the properties to be sold may be secured.

(c) That the powers of sale given to the Alien Property Custodian may be effectively exercised by him.

7. Any property sold by the Alien Property Custodian either at public or private sale may be sold for cash or upon credit; and in the latter event such security for the payment of that portion of the purchase price remaining unpaid may be taken as he shall deem proper in the premises. He shall be authorized to set a minimum or upset price upon any property offered for sale by him; to fix and prescribe the terms and conditions upon which bids will be received; to determine generally and specially qualifications to be met by persons offering to bid; to require deposits from prospective bidders; to determine generally or specially the nature and extent of information concerning any property or properties offered or to be offered for sale which shall be given prospective bidders, and the inspection thereof which shall be allowed; to have made auditor's reports and appraisals of property or properties offered or to be offered for sale; and to make and establish general and special terms and conditions to govern any and all sales to be made by him. Any property or properties thus sold may be sold subject to or free from any or all debts, claims, obligations and liabilities of all kinds created or arising out of or in respect of, any such property or properties or the conduct or other operation of any such business or other undertaking by the Alien Property Custodian or otherwise; and subject to or free from liens, charges or incumbrances; and payment of such debts, claims, obligations, liabilities and liens, charges and incumbrances, and of all expenses of such sale or sales may be made out of the proceeds from such sale or sales, or may be required to be made or assumed by the purchaser, as the Alien Property Custodian shall determine.

8. All costs and expenses incurred by reason of or in respect of, and all claims and demands of every kind, character and description based upon or arising out of, the custody, management, administration, protection, perservation and control of any such property and the conduct or other operation of any such going
515 business or other undertaking and the sale or other disposition of any such property, shall be limited to and paid or satisfied out of only the property or business or undertaking involved and out of which, on account of which, or in respect of which such cost, expenses, claim or demand shall have been incurred and shall have arisen or been created; provided that whenever such property or the income therefrom or the assets of any such going business or other undertaking shall be insufficient therefor, such cost, expenses, claim or demand shall be charged thereto, but may be paid or satisfied out of money or other property received from, or as the property of, the same enemy. Neither the Alien Property Custodian nor any agent, attorney, bailee, manager or depositary appointed by him shall be liable personally to any one for or on account of anything done or omitted in respect of, or for any debt or other obligation of any kind or character owing, created or growing out of or in any other way arising from, any such property or the custody, management, administration, protection, perservation, control and / or sale or other disposition thereof, and / or from the conduct or other operation of any going business or undertaking; except in the event of intentional injury or fraudulent misconduct by the person attempted to be charged with liability.

9. The Alien Property Custodian and agents, attorneys, bailees, managers and depositaries for him, within the limits of the authority granted by him, shall have power and authority to do any and all things reasonable or proper in or about or in respect of the exercise of any of the powers and authority specifically granted above; and in addition are authorized and directed hereby to manage all such property and to do any act or things in respect thereof or make any disposition thereof or any part thereof by sale or otherwise and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof, in like manner as though the Alien Property Custodian were the absolute owner thereof, subject to no limitations or restrictions other than those specifically set forth herein or in said "Trading With the Enemy Act," as amended or any prior Executive orders issued pursuant thereto not in conflict herewith.

Power to Issue Requirements Not Inconsistent with Licenses Granted
under the Authority of the President.

1. Whenever the Alien Property Custodian shall after investigation determine that any money or other property, including any going business or other undertaking, which is being held, managed, used or employed under a license granted by the President, or in

the exercise of the power and authority conferred upon the President by said Trading With the Enemy Act as amended, is owing or belonging to or held for, by, on account of, on behalf of, or for the benefit of an enemy or ally of enemy, and such license provides as one of its terms or conditions that such property shall, upon demand or requirement of the Alien Property Custodian, be conveyed, transferred, assigned, delivered, and / or paid over to him, the Alien Property Custodian may, without the revocation of such license, require that said money or other property or any part or parcel thereof be conveyed, transferred, assigned, delivered or paid over to him; subject, however, to the continued exercise of such license, but under his supervision or under such other supervision as he may prescribe, and for such period of time or until the happening of such event as he shall prescribe. Whenever such money or property or any part thereof, at the time such requirement is made, shall be used or employed in or about the conduct or management of any mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property

516 & 517 Custodian may require that such money or other property and / or the proceeds from the conduct or management of such business be conveyed, transferred, assigned, delivered or paid over to him, subject to the continued exercise of such license and the continued conduct or management of such business or other undertaking as above provided; and he may leave all or such part of the money or other property of such business or other undertaking in the possession of the licensee or the agent or representative of the licensee to be used, disposed of, and accounted for, in the continued exercise of such license. Any requirement made by the Alien Property Custodian pursuant to the provisions hereof shall be subject to modification or change by him at any time prior to the final compliance therewith. Any of such property other than money, including any such going business or undertaking, may be advertised and sold by the Alien Property Custodian, subject to the exercise of any such license, but for the account of the Alien Property Custodian or for the account of the purchaser as the Alien Property Custodian may determine; and until the purchaser of such property shall be placed in the possession thereof or during such other period as the Alien Property Custodian may determine.

Effect upon the Satutory Powers of the Alien Property Custodian and upon Prior Executive Orders.

1. Nothing herein contained shall limit or shall be construed to limit, in any way the rights, powers and authority conferred upon the Alien Property Custodian by the "Trading With the Enemy Act" and the amendments thereto and the Executive orders heretofore issued pursuant thereto.

2. All Exeutive orders heretofore made are amended and modified hereby to such an extent as may be necessary to conform with

the provisions hereof; but with this exceptions, an of such orders in force and effect at the time this order is issued are expressly ratified and continued in full force and effect.

WOODROW WILSON.

The White House,
16 July, 1918.

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DEFENDANTS' EXHIBIT T-1.

Know all men by these presents That I, ———, of ———, do hereby constitute and appoint, Mr. Hans E. Stoechr my Attorney and Agent for me and in my name, place and stead, to vote as my proxy at the election of Directors of the Botany Worsted Mills at the annual Meeting of Stockholders to be held on Tuesday, March —, 191—, at 12 O'clock noon, or at any adjournment thereof, according to the number of Votes I should be entitled to cast if then personally present, and to represent me generally at such Meeting.

In witness whereof, I have hereunto set my hand and seal this 2nd day of March One Thousand Nine Hundred and fourteen.

KAMMGARNSPINNEREI STÖHR & CO.,

Aktien-Gesellschaft.

KUNTZ HARZ, *p. p.*

Signed, sealed and delivered in the presence of:

RICH. LICHETRAUS. (?)

519 The foregoing was all the evidence offered and received by the Court in the above-entitled action. The foregoing statement of the proceedings and of all the evidence in the above-entitled action is in all respects correct and is hereby approved.

Done in open Court, this 10th day of September, 1920.

(Signed)

LEARNED HAND,
*United States District Judge,
Southern District of New York.*

It is hereby stipulated and agreed that the foregoing transcript of the proceedings and evidence given upon the trial of this action is in all respects correct and that the same may be settled and signed by the Trial Judge.

Dated, New York, Sept. 9, 1920.

VALENTINE TAYLOR,
Solicitor for Plaintiff.

JOHN QUINN,
Solicitor for Defendants Stöhr & Sons, Inc., and for Defendant Directors of Stöhr & Sons, Inc., and for Defendant Botany Worsted Mills and Deft. Directors of Botany Worsted Mills.

FRANCIS G. CAFFEY,
Solicitor for Defendant Francis P. Garvan, Individually and as Alien Property Custodian, and for Defendant A. Mitchell Palmer.

[Endorsed:] E 15-327.

520 United States District Court, Southern District of New York.

MAX W. STÖHR, etc.,

against

JAMES N. WALLACE et al.

Opinion, Learned Hand, D. J.

U. S. District Court, S. D. of N. Y. Filed Apr. 21, 1920.

521 United States District Court, Southern District of New York.

MAX W. STÖHR, Suing in His Own Behalf as a Stockholder in Stöhr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

Final hearing upon a bill in equity filed by the plaintiff, suing in his own behalf as a shareholder of Stöhr & Sons, Inc., and in behalf of all others similarly situated, against the Alien Property Custodian, the corporation and directors of Stöhr & Sons, Inc., and the corporation and directors of Botany Worsted Mills. Answers were filed by all the defendants and the cause came on for hearing before the District Court. Testimony was taken and arguments heard and the case submitted for final decree.

The bill alleges that the plaintiff is a shareholder of a New York

corporation, Stöhr & Sons, Inc., and a naturalized citizen of the United States, residing in the County of New York. That on the seventeenth of February, 1917, and from then continuously until the present time, he was the owner of forty-four shares of capital stock of Stöhr & Sons, Inc., which on the twentieth-day of February, 1917, became the owner of 14,900 shares of the capital stock of the defendant Botany Worsted Mills, a New Jersey corporation. That on February nineteenth, 1917, Stöhr & Sons, Inc., became and has since been the owner of 5,690 other shares of the Botany Worsted Mills (property which has now been eliminated from the suit). That all these shares were seized by the Alien Property Custodian on the twentieth day of March, 1918, as enemy owned, and that pursuant to said seizure the Custodian caused to be elected the individual defendants as directors of the two corporations mentioned, and ordered the directors of the Botany Worsted Mills to issue to him as Alien Property Custodian all the shares of stock so seized. That he has assumed control and possession of the properties of such corporations and that the defendant directors have refused to recognize the rights of those who were former officers of said corporation, when the Custodian took charge. That the Custodian has in the daily newspapers of New York advertised these shares of stock for sale, although it was not necessary and never has been necessary to sell them, as both corporations are solvent and have large assets. That such sale would be in violation of the Trading with the Enemy Act and the Constitution of the United States as without due process of law and without any notice or opportunity given to Stöhr & Sons, Inc., to be heard in any judicial proceedings looking to the condemnation or sale of such shares. In especial that the Custodian has announced that he will exclude at such bidding any person who is not a citizen of the United States under Section Twelve of the act, which is unconstitutional. That he will allow no inspection of the plant except to those who have deposited a certified cheque of twenty-five thousand dollars; that the terms and conditions of sale are unreasonable and onerous, and that the sale of so large a quantity of the stock will necessarily result in a low price, especially as the sale will be conducted so as to exclude a number of prospective bidders and result in undue sacrifice of the property sold. That Stöhr & Sons, Inc., is a domestic corporation and not an alien enemy and that the sale would therefore be in excess of the powers of the Custodian. That on November twenty-third, 1918, nine days before the bill was filed, the plaintiff under Section Nine of the Trading with the Enemy Act filed a notice of claim with the Alien Property Custodian, demanding that the sale should not be made, which was disregarded. That the present directors of Stöhr & Sons, Inc., and the Botany Worsted Mills are creatures of the Alien Property Custodian, elected to carry out his interests, and that it would be useless to make a demand upon them to institute this suit.

The bill prays that the cloud on the shares of stock resulting from the capture be removed, that the capture be declared illegal and unconstitutional, and that the Custodian be enjoined from selling

the shares. A copy of the contract through which Stöhr & Sons, Inc., acquired the shares of stock, is annexed to the bill.

Upon the hearing the following facts in substance developed. Before February fifteenth, 1917, there existed in the City of New York a partnership under the firm name of Stöhr & Sons doing business as woolen merchants. The partners were Eduard Stöhr, the father, and his three sons, Hans E., Georg and Max W. Their interest in the partnership was as follows:

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Eduard	\$420,000
Hans E.	80,000
Georg	50,000
Max W.	10,000

amounting in percentages to approximately seventy-five per cent., fourteen per cent., nine per cent. and two per cent. Eduard and Georg were German subjects, living in Leipzig; Hans E. was a German subject, living in New York, who had formally declared his intention of becoming a citizen; Max W. was a native German, but had become naturalized in 1910, and lived in New York. On February fifteenth Max W. Stöhr, Georg Röhlig and Alfred de Liagre (relatives of the Stöhrs) executed a certificate of incorporation under the laws of New York, of Stöhr & Sons, Inc., with a share capital of \$250,000, and on February seventeenth the necessary formalities of incorporation were completed. The directors named were Hans E. and Max W. Stöhr, Röhlig and de Liagre, and they were also the officers. On February nineteenth the assets of the partnership, amounting to more than one million dollars in value, were transferred to the corporation in exchange for the shares of stock, all of which were issued to Max W. Stöhr with the exception of three hundred and fifty-seven shares, issued to Hans E. At the same time these shares were transferred to Hans E. and Max W. Stöhr and Georg Röhlig as "voting trustees" for five years under the laws of New York, and "voting trust certificates" were issued in the same proportion as the original issue of shares, that is to say, Max W. held all the "certificates" except three hundred and fifty-seven shares, which went to Hans. However, of those which Max

524 received, he held eighteen hundred and seventy-five in trust for Eduard Stöhr, and two hundred and twenty-three in trust for Georg Stöhr.

Kammgarncspinnerei Stöhr & Co. Actiengesellschaft was a German corporation doing a woolen business in the City of Leipzig, Germany, and organized by Eduard Stöhr in 1880. It had a share capital of twelve million marks, of which the ownership does not definitely appear. Hans owned something over a million, Georg between one and a half and two million; Max six hundred thousand and Eduard more than any of them, but the total is not given. There were many other shareholders, as the shares were listed on the Berlin Boerse and had been generally distributed to an extent

not disclosed. On last information, Eduard Stöhr was President of the Aufsichtsrat, corresponding generally to the board of directors of an American corporation; Hans E. was a member of that body, and Georg was a managing "director," i. e., one of the two Procuristen.

This corporation for long had held 14,900 shares in the Botany Worsted Mills, one of the largest and best equipped mills in the United States, doing a profitable business at Passaic, New Jersey, in the manufacture of yarns and woollens. In 1915 ten thousand of these shares were transferred on the books of the company to Hans E. Stöhr and four thousand nine hundred shares to Max W. Stöhr, each as trustee for the Leipzig company, and so they remained until the twentieth of February, 1917. On that day Hans E. Stöhr, in New York, assuming to act for the Leipzig corporation, made a contract with Stöhr & Sons, Inc., through Röhlig, its vice-president, a copy of which follows:

"Agreement made at Passaic in the State of New Jersey, on the 20th day of February, 1917, between Kammingarn-spinnerei Stöhr & Co., Aktiengesellschaft of Plagwitz-Leipzig, Germany, hereinafter called the 'Leipzig Company,' party of the first part, and Stöhr & Sons, Inc., hereinafter called the 'New York Company,' party of the second part, witnesseth:

Whereas, the Leipzig Company is beneficially interested in Fourteen thousand nine hundred (14,900) shares of the capital stock of the Botany Worsted Mills, a New Jersey corporation, which said shares of stock are now standing in the name of Hans E. Stöhr and Max W. Stöhr and are represented by the following certificates, each certificate being for Five (5) shares of said stock:

* * * * *

and

Whereas, the Leipzig Company is desirous of selling and said New York Company is desirous of purchasing said interest on the terms and conditions hereinafter set forth,

Now, therefore, in consideration of the premises and of Five thousand (\$5,000) Dollars paid by the New York Company to the Leipzig Company on account of the purchase price, the receipt whereof is hereby acknowledged, and in further consideration of the mutual promises of the parties as herein set forth, it is hereby agreed as follows:

First. The Leipzig Company hereby sells, assigns and transfers unto the New York Company all of its interest in said shares and said shares of stock shall be forthwith transferred upon the books of the Botany Worsted Mills and placed in the name of the said New York Company.

526 Second. The terms of the sale and the purchase price for said shares shall be determined as follows and paid in the following installments:

(a) The purchase price shall be determined by and shall be equal to the book value of said shares as shown by the books of the Botany Worsted Mills. The price shall be payable in five (5) installments, the first installment being payable one year from date and the subsequent installments respectively in two, three, four and five years from date. From the last or fifth installment the sum of \$5,000 paid on account as hereinbefore recited with interest at six per cent. from date shall be deducted.

(b) The first annual installment shall be based upon and shall be equal to the book value of said shares, as shown by the books of the Botany Worsted Mills according to the last previous closing of its books on November 30, 1917; and the four subsequent annual installments shall be similarly based upon and shall be equal to the book value of the shares as shown by the last previous closing of the books of the Botany Worsted Mills on the thirtieth of November preceding the falling due of each of said annual installments.

(c) In arriving at the amount of each installment for each of said years the net worth of the hard assets of the Botany Worsted Mills after deducting the total liabilities shall be taken as the basis for the computation of the value per share and no allowance or increase shall be made on such installment for good will.

(d) In addition to the book value of said shares there shall
527 be taken into consideration and account the amount of the dividends received by the New York Company during the said five years from date in the following manner:

During the first year the amount of the entire dividends received by the New York Company on the said shares shall be added to the purchase price and shall be paid with the first installment; during the second year four-fifths of the entire dividends received on said shares of stock by the New York Company, during the third year three-fifths of said dividends, during the fourth year two-fifths of said dividends and during the fifth year one-fifth of said dividends so received on said shares shall be added to the annual installments of the purchase price and shall become part of said purchase price and shall be payable with each of said installments at the end of each of said respective years.

Third. That the certificates of stock for said Fourteen thousand nine hundred shares sold and transferred as hereinbefore provided shall be placed in the possession of the Leipzig Company as collateral security for the amount of the purchase price; but as each annual installment with said additions provided for in paragraph Second, Subdivision d, is paid the New York Company shall have the right to require the redelivery of, and the Leipzig Company will contemporaneously with the payment of each installment redeliver to the New York Company, one-fifth (1/5th) of said shares and thereupon the Leipzig Company shall continue to retain the remaining shares as collateral security for the balance of the purchase price still payable.

528 Fourth. The New York Company shall have the right at any time to require the deposit of the entire shares of stock or any balance thereof remaining in the hands of the Leipzig Company, with a bank or trust company to be selected by the Leipzig Company, such deposit to be made with such bank or trust company in escrow, to be held until the purchase price or the balance remaining unpaid shall have been fully paid or (in case of non-payment of any installment) until the Leipzig Company shall be entitled to said stock under the provisions of paragraph Fifth of this agreement.

Fifth. In the event that any of the said annual installments with said additions provided for in paragraph Second, subdivision d hereof, shall not be paid when due, then the Leipzig Company shall notify the New York Company in writing that it requires the payment of the installment then due together with the said additions and in the event that the New York Company shall not within sixty (60) days after said demand pay the said installment with the additions, then the said shares of stock or any remaining balance of said stock shall be forthwith retransferred to the said Leipzig Company on the books of the Botany Worsted Mills and all rights on the part of the New York Company to said stock or any such balance shall cease and the Leipzig Company shall retain the Five thousand (\$5,000) dollars, paid on account as hereinbefore recited, in full settlement of any claim against the New York Company and thereupon neither of said companies shall have any further claim against the other arising under or by reason of this agreement; it being understood that the non-payment of any subsequent installment shall not affect the portion or portions of the stock which may have been fully paid for by a previous installment or installments."

At that time Hans E. Stöhr was himself president of Stöhr & Sons, Inc., a director and shareholder as above set forth. On the same day, through the direction of Hans E. Stöhr, a transfer was recorded upon the books of the Botany Worsted Mills of all these shares from the name of Hans E. Stöhr and Max W. Stöhr, as trustees, to the name of Stöhr & Sons, Inc. The certificates themselves remained in Leipzig and have never been returned to this country, and in such case the by-laws of the Botany Worsted Mills provided that in order to be transferred notice must be sent from a local official in Leipzig that the transfer had there been made upon the certificates. No such notice was in fact received or has been received from that day to this. The transfer was therefore not in accordance with the by-laws of the Botany Worsted Mills. The Botany Worsted Mills had itself been founded by Eduard Stöhr in 1889. It had a capital stock of \$3,600,000 divided into 3,600 shares and at the time of the execution of the contract, Eduard, Georg, Hans and Max Stöhr were all directors, and Hans as treasurer was very active in its management, although one Thomas Prehn was its president.

On October sixth, 1917, Congress passed the Trading with the Enemy Act and vested in the President the power to capture all

enemy property. Section 7-a of that Act required all corporations who had any enemy shareholders to file a list of them as of February third, 1917, and in December, 1917, Hans E. Stöhr and his counsel, one Heyn, an American, in accordance with the duty so imposed, made a report on behalf of Stöhr & Sons, Inc., and the Botany Worsted Mills. Correspondence and several interviews ensued, and on February ninth, 1918, Heyn wrote a letter to the Custodian purporting to set forth all the facts. As to the fourteen thousand nine hundred shares, he said as follows: "These shares were in the name of H. E. Stöhr and M. W. Stöhr as trustees for Stöhr & Co., the Leipzig corporation, the beneficial interest being in Stöhr & Co. Regarding the contract for the purchase of said fourteen thousand nine hundred shares of Stöhr & Sons, Inc., from Stöhr & Sons of Leipzig, it has been fully explained that the control of Botany might be imperilled by a state of war because the voting right on stock of alien enemies or in which alien enemies had a beneficial interest (as was the case with said fourteen thousand nine hundred shares) was doubtful under the decisions of the courts, and if deprived of the voting right the control of Botany might be lost. This contract was made with reference to the control of Botany as between its stockholders and had of course no reference to the status of such control so far as the Alien Property Custodian is concerned. Such status is not affected whether such shares are in Stöhr & Co., the Leipzig corporation, or in Stöhr & Sons, the New York corporation. As we also stated verbally, there have been no resolutions or other corporate action by Stöhr & Company with the Leipzig corporation in confirmation of this transaction." Later in the same letter he said: "Considerably more than a majority of the stock [of Botany] is controlled by enemy alien interests within the meaning of the Alien Enemy Act. The total of the stock thus controlled (directly or indirectly) being 30,080 shares."

A copy of this letter at some time not definitely stated was approved in writing by Hans E. Stöhr. Before Heyn wrote it Hans E. Stöhr, who was himself not allowed to go to Washington, had written to Heyn two letters on February fifth, 1918. In one he gave a list of the stockholders of the Botany Worsted Mills and among the foreign stockholders he listed the Leipzig corporation for fourteen thousand nine hundred shares; the other read as follows: "I herewith wish to state that the majority of the stock of the Botany Worsted Mills, Passaic, N. J., and of Stöhr & Sons, Inc., N. Y., is held by parties who are alien enemies under the Trading with the Enemy Act. (This information is given by me as treasurer of the Botany Worsted Mills and as president of Stöhr & Sons, Inc.)" A majority of the shares of the Botany Worsted Mills necessarily included the shares here in question.

On April fifth, 1918, the Alien Property Custodian served a demand under Section 7-c of the Trading with the Enemy Act and Sections 2-a and 2-b of the Executive Order of February twenty-sixth, 1918, assuming to capture all the right, title and interest of the Leipzig company in the shares of stock of the Botany Worsted Mills. This was followed by a second demand later, and in February, 1919, he served another demand to capture all the interest of the

Leipzig company in the contract of February twentieth, 1917. By virtue of the transfer so effected, the Custodian obtained the registry in his own name upon the books of the Botany Worsted Mills of the shares of the Leipzig corporation and elected the individual defendants as directors of that company and of Stöhr & Sons, Inc. Both corporations have been under the control of such directors or their successors from that time until the present. In the autumn of 1918

the Custodian, as allowed by Section Twelve of the Trading
532 with the Enemy Act as amended, advertised for December second, 1918, the sale of a large number of shares of the Botany Worsted Mills, including the Leipzig company's shares. Section Twelve prevents any person not an American citizen from bidding at such a sale. He also in his advertisement annexed those conditions described in the bill. The bill was filed on December second, 1918, and the sale was postponed. Heyn and Hans E. Stöhr have since died.

Upon the trial the plaintiff insisted that Hans E. Stöhr was authorized to execute the contract of February twentieth, 1917, in the name of the Leipzig company and prayed that the trial should be postponed until it were possible to obtain evidence of that fact in Germany. The court reserved decision upon that question until it could learn whether the issue was material to a disposition of the case, meanwhile requiring of the plaintiff to submit by affidavit the particulars of such proof as he could make if permitted.

Louis Marshall and Louis J. Vorhaus for the Plaintiff.

George L. Ingraham, Lee C. Bradley and William H. Sadler, Jr. for the Alien Property Custodian.

John Quinn and Paul Kieffer for the other Defendants.

LEARNED HAND, D. J.:

This suit, in spite of its claim under Sections twenty-four and fifty-seven of the Judicial Code, must be regarded as dependent for jurisdiction upon Section nine of the Trading with the Enemy Act. The plaintiff filed a claim, avowedly made under that act, a few
533 days before bill filed, which he made a part of the bill itself, and there is, therefore, no procedural condition lacking to his rights. The fact that he has claimed jurisdiction erroneously need make no difference, if the evidence falls within that section, and especially if he has no other possible remedy. That he had none appears from a consideration of the purpose and structure of the act itself. Under Section seven (c) the President may seize all property which he decides to have enemy character, and under Section seven (c) all who comply with his demands get immunity in all courts. But nothing is settled by the capture itself except bare sequestration of the property in the hands of the Alien Property Custodian. It is quite true that under Section twelve as amended his powers are extended to include the general power to sell, but under Section nine any claimant friend may file a bill such as this, and either the bill automatically stays the sale, or at least the court

may stay it in a proper case, and such a suit Section nine makes the sole remedy of claimants. Thus it is apparent what the scheme of the act was. The reduction to possession of enemy property should be absolute, final and incontestible; it was to proceed by *ex parte* investigation and without right of review; it should include all property that the Alien Property Custodian decided to have enemy character. But it adjudicated nothing and its effect upon any right but that of possession was nil. In a suit under Section nine the investigation and decision are irrelevant. Instead of an original libel of information to condemn the property upon capture, which places the initiative upon the captor, the initiative in restoration is given to claimant friends, who, as soon as they choose within a fixed period, may reclaim under Section nine; until they do the Alien Property

Custodian is free to manage and even to sell under Section 534 twelve as amended. In the reclamation suit the validity of the capture is for the first time to be tested, and the question of title to be adjudicated. If the fixed period passes without any suit, the title by capture becomes good by a kind of prescription or limitation.

Such being the plainly disclosed plan of the act, it is apparent that the plaintiff here has no standing unless it be under Section nine, or unless the act be unconstitutional. The plaintiff does attack it as unconstitutional and this objection must first be considered. Cases like *McVeigh v. U. S.*, 11 Wall. 259; *McVeigh v. Windsor*, 93 U. S. 274, are not pertinent. They arose under the Civil War Confiscation Acts, which did not forfeit the property of all Confederates by virtue of their status, but of only six specified cases. There was no way for a claimant, even though an avowed Confederate, to prove that he was not within those classes except by appearance in the suit. To strike out his appearance in limine, on the ground that he was an enemy, as was done, was therefore to deny him the legal procedure accorded him by the statute. Section nine is the precise equivalent of this right, at least so far as concerns claimant friends, who are alone concerned here. The sole basis for the plaintiff's claim of unconstitutionality comes down, therefore, to the Custodian's power of initial sequestration *ex parte*. But how does this differ in substance from the customary right upon libels of information in rem to arrest whatever property officials may decide to be forfeit? Such property may not be reclaimed *pendente lite* by filing a bond; the claimant must endure the temporary loss of possession until the innocence of the res is adjudicated. The public purpose of the statute so far overrides this incident of his rights of property. How much more is this the case in time of war where the interests are vital? The difference is one merely of procedure, the substantial rights are the same, for capture effects no more than

an arrest in rem. The right to sell is the only addition and I have shown that this is at least subject to judicial control in the event of a bill filed under Section nine. The act therefore affords a complete remedy to all claimant friends, and is constitutional. As to claimant enemies, I have already considered its validity in *Kahn v. Garvan*, — Fed. R., —, but the point does not arise here.

The purpose of this suit is to prevent the sale of fourteen thousand nine hundred shares of stock in the Botany Worsted Mills, formerly owned by Kammgarnspinnerei Stöhr & Co., a German corporation doing business in Leipzig. All right of this corporation was captured under Section seven (c) and Sections two (a) and two (b) of the Executive order of February twenty-sixth, 1918, by the Alien Property Custodian's demand on April fifth, 1918, and all its rights under the contract of February twentieth, 1917, mentioned below were later captured in February, 1919. Nobody questions, as I understand it, that these demands effectively divested whatever rights the Leipzig company had against Stöhr & Sons, Inc., but the dispute is as to what these were. I shall assume for argument's sake that a shareholder may bring a representative suit in the right of his corporation under Section nine, and that the plaintiff here has shown a situation justifying his recognition in that capacity. I shall further assume, though the fact is in no way proved, that Hans E. Stöhr had a general authority which would cover the execution of contracts for the sale of such property as this for a consideration such as this. This assumption is all that the plaintiff has suggested he could prove if he had the chance to take proof in Germany.

536 The precise issue then becomes what rights the Alien Property Custodian got by his symbolic act of capture, and whether they gave him a right to sell under Section twelve. This question has nothing directly to do with the statute; it concerns first the rights of the Leipzig company; second, whether the belligerent rights of the United States were greater than the rights of the Leipzig company *inter partes*. If, then, Stöhr & Sons, Inc., has no interest in the shares which forbids the sale, the capture made the Custodian an unconditional *cestui que trust* by substitution under the transfer of 1915 to Hans and Max Stöhr. They, being dry trustees, cannot complain of the transfer of legal title to the Custodian's name, and Section twelve authorizes the sale. The question in the end turns upon the effect of the contract of February twentieth, 1917, which, viewed merely within its four corners, purported to convey to Stöhr & Sons, Inc., the shares, which were registered as such on the Botany Worsted Mills books in professed compliance with its terms. I shall assume that "title" to the shares thereby vested in Stöhr & Sons, Inc., in spite of irregularity under the by-laws of Botany Worsted Mills. The contract, verbally taken, was one of two kinds—either a sale with the purchase price payable in five future annual installments, the Leipzig company meanwhile reserving a vendor's lien, or an option granted Stöhr & Sons, Inc., to buy one-fifth of the shares in five successive years, provided they made each payment within sixty days after due date. If the contract is valid at all against the United States, and if it was intended as written, on either interpretation the plaintiff is entitled to some relief, because under the first, the Leipzig company must sell under its vendor's lien, and such a sale would be free from the limitations of sales under

537 Section twelve as amended. If, on the other hand, Stöhr & Sons, Inc., has only an option, then it can be terminated

only on sixty days' notice and no such notice has been given. Therefore, if the contract is valid against the right of capture, the Alien Property Custodian must prove that it was not the true intent of the parties, and that the equitable right of the Leipzig company is unlogged by any equity of redemption or option. I shall first assume that it would be valid against the United States.

In order to ascertain the real intent of the parties on February twentieth, 1917, it is necessary first to consider their situation and the events of the day before. The firm of Stöhr & Sons was composed of three Germans and one naturalized American, whose interest amounted to less than two per cent. It was for all practical purposes, therefore, a German firm doing business in New York, and it was obvious after February third, 1917, the day when Count von Bernstorff received his ex equatur, that its existence was imperilled by the almost certain event of war. On February fifteenth, 1917, Max, the American partner, de Liagre and Röhlrig, also naturalized Americans, executed a certificate to form a New York corporation of twenty-five hundred shares. In the certificate of incorporation Hans Stöhr was made a director and he became president at once. All the stock was by several transfers issued to Hans E., Max W. Stöhr and to Röhlrig, in exchange for the firm property, having a net value of over one million dollars, and they held it when issued as "voting trustees" under the New York statute for five years. "Trust certificates" were issued by these trustees to the four Stöhrs in proportion to their interests in the old firm, except that Max, the American, held the certificates of Eduard and Georg, residing in Germany, in trust for them, a trust upon a trust.

538 The result was that on February nineteenth, 1917, the share of the German partners had not been put beyond the reach of capture any better than if the firm had remained in existence. All that was accomplished, and in my opinion all that was desired, was to secure the firm against dissolution in the event of war, and to insure the voting right in two Americans on whom Hans could rely, if his own right to vote on the shares became affected by his enemy character. I doubt whether the parties then or later thought of any possible confiscation at all, but if they did, it is clear either that they despaired of any successful evasion of it, or that they were constrained by motives of prudence or conscience. In any event they left the substantial interests of the partners susceptible to capture and confiscation.

On the following day Hans E. Stöhr, assuming to act for the Leipzig company, made the contract here in question with Stöhr & Sons, Inc. The plaintiff argues that it effected an immediate change of title to the shares here in suit and that it left in the Leipzig company no interest save a vendor's lien. The execution of that contract could have been actuated as little by a desire to escape capture by the United States as were the transactions on February nineteenth, 1917, and for the same reason. From the point of view of the Leipzig company nothing was gained. The first payment was a year in the future, and the rest succeeded annually. If the United States were

to confiscate enemy property, the consideration was as easily discovered as the shares; it would equally be lost. From the point of view of Stöhr & Sons, Inc., nothing was gained, because while the shares became the property of a New York corporation, all but two per cent of its shares, controlling the substantial interest in the assets, 539 was equally lost. Hence the contract was not *tabula in naufragio*; some other motive must be found.

On the other hand, it is clear, of course, that the contract was not a commercial transaction. The occasion is enough to prove this and the events leading up to it. Besides, the contract itself proves that it could not have been due to ordinary commercial motives. The Botany Worsted Mills had been a successful business, already twenty-eight years in existence and one of the largest and best equipped in the United States. No possible reason can be suggested for the sudden sale of nearly a majority of its shares, which was not based upon an emergency. Moreover, the consideration was inadequate. It expressly omitted the good will, which must have had a substantial value, and it fixed no present price at all, so that it insured nothing to the Leipzig company except a sale of one-fifth each year at the then book value of its "hard assets." If the shares fell in value, the Leipzig company bore the loss, both in general value and in book value; if they rose, it did not share the gain except in so far as that was reflected in book values. Possibly it is legitimate to observe also that our entrance into the war was likely to have that advantage to woolen mills which the event proved.

Now Hans E. Stöhr was not acting alone for himself and his family. The record does not show how many outside shareholders there were in the Leipzig company, but they were many. He was in the position of selling for an apparently inadequate consideration to his family, property in which other persons were interested as well as they. The contract if not, therefore, justified upon the principle of selling to Crassus a burning house, could not be justified at all; it was apparently a fraud. And even if not clearly such, it was void-able at the instance of any single German shareholder who 540 chose to protest. It was not likely that Heyn, a capable adviser, should have seriously expected a contract with such infirmities to stand; indeed, it is not credible that the parties could have intended it as a commercial bargain at all, except it were, what it was not, a desperate catch at salvage.

Besides, to give even a colorable plausibility to the bargain, the plaintiff's position requires the assumption that the contract was mutual in its obligations. The point is not in any sense critical, but perhaps worth notice, because it was pretty clearly not a contract of purchase, but only an option. Of course, I am aware of the doctrine that bilateral obligations are generally presumed in like case, and that the courts will light on such words as "agreed" and the like, when they need them, but all such canons are only guides to the interpretation of general intent. I should perhaps think that the obligations were mutual, were it not for article five, but that being there, the omission of any express promise to pay may well have been de-

liberate. Article five in terms provides that the remedy of the Leipzig company on default shall be one which is in substance strict foreclosure, and that after strict foreclosure there shall be no further right of action on either side. It is quite true that it does not expressly say that this shall be the only remedy, but in view of the conclusion of the article I should be disposed so to construe it, especially when, as I have said, there are elsewhere no express covenants to pay the purchase price. It is unexpected, to say the least, that an experienced lawyer like Heyn should have introduced a clause of strict foreclosure in a genuine contract of sale, knowing it to create a forfeiture. The structure of the contract, therefore, if the case turned on it, would lead me to call it an option.

541 The surroundings confirm that conclusion. As I have shown, while the contract was heavily weighted against the Leipzig company, conceivably it might involve Stöhr & Sons, Inc., in embarrassing obligations, because the transaction was large. After the annual appraisals, the shares might fall; the company might be on an obvious decline. Some recalcitrant Leipzig shareholder might insist upon ratification of the bargain and place Stöhr & Sons, Inc., in an awkward predicament. But if it were only an option, all this would be avoided. The omission to include any promise to pay at least fits with that purpose not to induce the Leipzig company to call for performance, which may be inferred from the unequal inducements of the contract to either party. If the contract were never intended to be enforced, and if some of the Leipzig shareholders were not altogether reliable, we should look for a contract in substance and in form not dissimilar.

But as an option for five thousand dollars to purchase during a period of five years five million dollars of shares at prices which confessedly omitted an important element of value, the contract is too open a fraud upon the Leipzig company to admit even of argument. Hans E. Stöhr and Heyn were not engaged in any such enterprise; the plaintiff would be the last to suggest that they were. Therefore, I think I may say that it is demonstrated that neither was the contract intended to sell out in an emergency so as to escape putative capture, nor was it a genuine business transaction dependent upon an estimate of the mutual advantages of the parties. There remains only the possibility that it was not intended to represent the real purpose of the parties at all, but to serve as a cover for another purpose.

We are, moreover, not left to surmise as to what that purpose 542 was, because the written statements of Hans E. Stöhr and Heyn just before the capture very frankly disclose it. It was merely the continuation of what they had done in 1915, when they put the legal title in the name of Hans E. and Max W. Stöhr for convenience of management, and what they had done in the case of the partnership just before February twentieth, 1917, for the same reason. They wished to put their house in order against the disabilities and inaccessibility of their German associates during the period of a war which could certainly not go more than five years. This they did, so far as I can see, without the slightest anticipation of any

confiscation of enemy property—which had indeed been generally supposed for over a century to be obsolete.*

Hans E. Stöhr wrote two letters to Heyn on February fifth, 1918, while Heyn was in Washington, arranging so far as he could the affairs of the Stöhrs with the Alien Property Custodian. In one letter he said that the shares in question were owned by the Leipzig company; in the other that the majority of the Botany Worsted Mills was enemy owned. Each was probably intended for transmission to the authorities, and each flatly contradicted the contract of February twentieth, 1917, at least unless it was an option, which,

as I have shown, is incredible. When Heyn came to make
543 his final statement, cumulative upon the earlier reports under

Section seven (a)—a statement which Hans expressly approved—he specifically mentioned the contract of February twentieth, 1917, and referred it exclusively to the supposed danger to the voting control of the Botany Worsted Mills. It "had," said he, "of course no reference to the status of such control so far as the alien property custodian is concerned. * * * Considerably more than a majority of its stock is controlled by alien enemy interests within the meaning of the Alien Enemy Act." This information was given in compliance with Section seven (a), the second paragraph of which requires a statement as of February third, 1917, of all enemy shareholders who the corporate officer had cause to suppose then or later owned any shares. Heyn would have had to disclose that Hans E. and Max W. Stöhr were trustees on February third, 1917, for so the books would show. The section in addition required him to say what shares were enemy owned though standing in the name of another when the report was filed. He was therefore positively required to state the character of the relations arising under the contract of February twentieth, 1917, and his account of it was authoritative. There can be no question that, had the Leipzig company had only a vendor's lien, it would have been a wrong upon Stöhr & Sons, Inc., to fail to state its full rights. In saying that the "control" for purposes of the act was in the Leipzig company, I may fairly suppose that he had in mind those provisions of Section seven (a) under which he was acting; he used "control" as "owned."

Heyn and Hans E. Stöhr are now dead, but the aspect which the plaintiff seeks to put upon the contract is an apocryphal afterthought, which there is no reason whatever to suppose that they, were they

*Oppenheim, International Law, Vol. II, §102.

Halleck, International Law, Chap. XIX, §§12-21.

Wheaton, International Law, 5th Eng. Ed. (1916), pp. 417, 418, 419, 424, 425, 426.

Hall, International Law, 6th Ed. (1909), pp. 431-435.

Twiss, The Law of Nations, §§53-56,

Westlake, International Law, Vol. II (1907), pp. 38-44.

Hague Second Conference, Art. 53, "Regulations Respecting the Laws and Customs of War on Land."

Magna Carta, §41, seems to have contained the germ of the same idea.

544 alive, would now have the disposition, or the hardihood, to adopt. Their declarations ante litem motam fit that interpretation, which alone acquits them at once of any purpose to defraud either their associates, or the United States in its right as captor. I have no question that the beneficial ownership of the Leipzig shares was always intended to remain in the Leipzig company.

The question whether the contract was invalid as a fraud on the belligerent rights of the United States is not, therefore, of critical consequence, in view of the completeness of the proof that there never was any transfer at all. The nearest authorities I have been able to find are those relating to prize. It was well settled before the Great War that under French law no transfers of cargo or bottoms, *flagrante bello*, were valid, this being recognized as in diminution of the belligerent's right of capture, though under American and British law the same doctrine did not obtain.* In those countries such transfers are valid, but only if made while the goods or vessel are not in transitu. *The Benito Estenger*, 176 U. S. 568, *The Bawean*, 1917, Prob. Div. 58, *The United States*, 1916, Prob. Div. 30. The claimant must, moreover, even when the goods were not in transitu, establish an unconditional transfer, and the scrutiny as to this point is especially severe, any retention of enemy interest being sufficient to prevent its being regarded as absolute. *The Benito Estenger*, supra, *The Sechs Geschwistern*, 1 Ch. Rob. 190, *The Jemmy*, 4 Ch. Rob. 31. If the sale were absolute of a vessel or cargo not in transitu, being good, *flagrante bello*, it was a *fortiori* good, imminent
545 bello. But if the sale be *imminente bello*, and in contemplation of war and to avoid capture, the same limitations applied, *The Daksa*, 1917, App. Cas. 386, *The Southfield*, 1917, App. Cas. p. 390, note (Sir S. E. Evans), *The Tommi*, 1914, Prob. Div. 251, *The Jan Frederick*, 5 Ch. Rob. 115, *The Vrow Margaretha*, 1 Ch. Rob. 337, *The Baltica*, 11 Moore P. C. 141. Thus, an absolute sale of goods in transitu, or a sale with reservation, is void if made to avoid capture. In general it is the rule that the enemy character of the goods depends upon their character at the outset of the voyage. *The Packet de Bilbao*, 2 Ch. Rob. 133, *The Ann Green*, Fed. Cas. 414.

It is quite true that the right of capture on land depends upon the action of Congress, *Brown v. U. S.*, 8 Cranch. 110, and is not a part of our customary law arising from a state of war. Yet the incidents of sea capture might in the absence of contrary legislative expression be perhaps looked to as a fair analogy. The reason of the rule which makes the *transitus* a test of the validity of a transfer, im-

*Oppenheim, International Law, War §§91, 92.

Westlake, International Law, Part II, ed. 1907, p. 150.

Hall, International Law, Part III, chap. VI 6th Ed., 499, 500.

Wheaton, International Law, 5th Eng. Ed., 576, 577.

Twiss, Law of Nations, Part II, §§162, 163.

The Declaration of London, §§56, 57, made certain modifications in the British and American rule.

minente bello, was considered by the Privy Council in *The Baltica*, supra, and it was held to be the difficulty involved in detecting reserved enemy interests. Therefore, a ship was restored when delivery was made to the transferee at an intermediate port. The theory was repudiated that while at sea the belligerent's rights are already inchoate and that the ship has come, as it were, already into the jurisdiction of the captor.

In spite of *The Baltica*, supra, it might still be that sales of goods within enemy territory, imminente bello, and to avoid capture, ought to be regarded as in fraud of belligerent rights, if the statute said nothing. A serious argument might be made in favor of such a result, once a policy of land capture be inaugurated, but under this act it appears to me that Section seven (b) effectively

546 closes any such discussion. A part of the first paragraph of that section reads as follows: "no person shall by virtue of any assignment * * * to him of any * * * chose in action by * * * an enemy * * * have any right or remedy against the * * * obligor * * * unless said assignment * * * was made prior to the beginning of the war." It might indeed be open to a good deal of question whether this included an assignment of equitable interests in shares of stock, *Brown v. Fletcher*, 235 U. S. 589, though shares are analogous to choses in action, *Jellinik v. Huron Copper Co.*, 77 U. S. 1, and a fortiori equitable interests in shares. But I think that the purpose of the statute is pretty clearly indicated even if its letter do not cover this precise case. It can scarcely be supposed that an exception would be made in favor of ante bellum transfers of choses in action which did not apply to property so nearly akin as this, or indeed to all property, and it is clear that absolute transfers of choses in action before April sixth, 1917, would be valid. Apparently the United States meant not to inquire into such transfers as in fraud of its rights. There is no reason to extend the application of so penal a statute beyond its fair import; therefore, the capture must stand upon the ground that the contract conveyed nothing to Stöhr & Sons, Inc. Upon that ground it finds sufficient support.

It becomes unnecessary to consider the prayer of the plaintiff for letters rogatory.

Upon the understanding that this suit now concerns only the fourteen thousand nine hundred shares of the Leipzig company, the bill will be dismissed with costs.

April 21, 1920.

LEARNED HAND,
D. J.

547 At a Stated Term of the District Court of the United States in and for the Southern District of New York Held at the United States Courts and Post Office Building, in the Borough of Manhattan, New York City, on the 13th Day of May, 1920.

Present: Honorable Learned Hand, District Judge.

E. 15-327.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situ-
ated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW
B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Ma-
loney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney,
Richard Stockton, Francis P. Garvan, Individually and as Alien
Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills,
and Paul Kieffer, Defendants.

This cause came on to be heard at this term, and was argued by
counsel; and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed that the original and supplemental
bills of complaint herein be and they hereby are dismissed upon the
merits, with costs to the defendants to be taxed.

LEARNED HAND,

U. S. D. J.

547½ [Endorsed:] E. 15-327. Jun. 11, 1920. Recd. & Order
Given. V. Taylor. Form No. 336. U. S. District Court,
Southern District of New York. Max W. Stoehr versus James N.
Wallace et al. Order with Notice of Entry. Francis G. Caffey,
United States Attorney, Solicitor for Deft. Garvan, individually and
as A. P. C. Due service of a copy of the within is hereby admitted.
New York, —, 19—. —, Attorney for —. To
Valentine Taylor, Esq., Attorney for Complainant, 52 Wall St. U.
S. District Court, S. D. of N. Y. Filed May 13, 1920. Copy received
Jun. 11, 1920, 3.51 P. M. House, Grossman & Vorhaus, by —
—Attys. for —.

SIR:

You will please take notice that an Order of which the within is a
copy, was this day duly entered in the within-entitled action, in
the office of the Clerk of the U. S. District Court, Southern District
of N. Y.

Dated, N. Y., May 13, 1920.

Yours, etc.,

FRANCIS G. CAFFEY,

U. S. Attorney, Solicitor for Defendant

Francis P. Garvan, Individually

and as A. P. C.

548 United States District Court, Southern District of New York.

MAX W. STOCHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. DUVALL, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, Francis P. Garvan, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, and Paul Kieffer, Defendants.

Petition for Appeal.

To the Honorable Learned Hand, judge of said court:

Max W. Stoehr, the complainant in the above entitled action, by Valentine Taylor, his solicitor, feeling himself aggrieved by the final Decree of this Court, entered on the 13 day of May, 1920, dismissing his original and supplemental bills of complaint upon the merits at the plaintiff's cost, hereby prays that an appeal may be allowed to him from the said Decree to the Supreme Court of the United States and, in connection with this petition, petitioner herewith presents his assignment of errors.

VALENTINE TAYLOR,
Solicitor for Complainant.

LOUIS MARSHALL,
LOUIS J. VORHAUS,
Of Counsel.

549 [Endorsed:] United States District Court, Southern District of New York. Max W. Stoehr, suing in his own behalf as a stockholder in Stoehr & Sons, Inc., etc., Complainant, against James N. Wallace, & ano., Defendants. Copy. Petition for appeal. Valentine Taylor, Attorney for Complainant, No. 52 Wall Street, New York City. U. S. District Court, S. D. of N. Y. Filed May 14, 1920.

550 UNITED STATES OF AMERICA, vs.:

To James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, Francis P. Garvan, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, and Paul Kieffer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty

(30) days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the United States District Court for the Southern District of New York, wherein Max W. Stoehr, suing in his own behalf as a stockholder in Stoehr & Sons, Inc., and in behalf of all others similarly situated, is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness: The Honorable Edward D. White, Chief Justice of the United States this 13 day of May, 1920.

LEARNED HAND,

*Judge of U. S. District Court for
Southern District of New York.*

551 [Endorsed:] United States District Court, Southern District of New York. Max W. Stoehr, suing in his own behalf as a stockholder, etc., Complainant, against James N. Wallace & ano., Defendants. Copy. Citation. Valentine Taylor, Attorney for Complainant, No. 52 Wall Street, New York City. U. S. District Court, S. D. of N. Y. Filed May 14, 1920.

552 United States District Court, Southern District of New York.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder of Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. DUVALL, Walter S. Jones, THOMAS F. MARTIN, THOMAS J. MALONEY, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, Francis P. Garvan, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, and Paul Kieffer, Defendants.

Assignment of Errors.

Now comes the appellant, Max W. Stoehr, by Valentine Taylor, his solicitor, and in connection with his petition for appeal says:

That in the record, proceedings and in the Decree rendered in this suit by the United States District Court for the Southern District of New York on May 13, 1920, manifest error has intervened to the prejudice of the appellant, to wit:

I.

The Court erred in holding that the Act of Congress known as "Trading with the Enemy Act," approved October 6th, 1917, and the amendments thereto approved March 28, 1918 and November

12, 1918, in so far as the same undertook to permit the seizure of the property of Stoehr & Sons, Inc., a New York corporation, ex parte and without affording to it a hearing or an opportunity to be heard and to confer upon the Alien Property Custodian the right to sell the property so seized without proceedings before a judicial tribunal, was constitutional.

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II.

The Court erred in refusing to hold that in so far as the Alien Property Custodian undertook ex parte and without a legal proceeding based upon notice and a hearing or an opportunity to be heard in court, to take possession of the shares of stock of the Botany Worsted Mills belonging to Stoehr & Sons, Inc., and to determine that such shares belonged to Kammgarnspinnerei Stoehr & Co. Aktiengesellschaft, or any other enemy, his action was null and void and in violation of the due process clause of the Constitution of the United States.

III.

The Court erred in refusing to hold that any title that may have accrued to Stoehr & Sons, Inc., under the terms of the contract of February 20, 1917, was not divested by the passage of the "Trading with the Enemy Act," and in refusing to hold that in so far as said Act undertook to divest such title it constituted a deprivation of property without due process of law within the meaning of the due process clause of the Constitution of the United States.

IV.

The Court erred in refusing to hold that the sale attempted by the Alien Property Custodian of the shares of stock of the Botany Worsted Mills claimed by Stoehr & Sons, Inc., a New York Corporation, in the absence of a judgment in a proceeding duly instituted and conducted in accordance with due process, constituted a violation of the right of property of Stoehr & Sons, Inc., within the meaning of the due process clause of the Constitution of the United States.

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V.

The Court erred in holding that Stoehr & Sons, Inc. acquired no title to the 14,900 shares of stock of the Botany Worsted Mills described in the contract of February 20, 1917.

VI.

The Court erred in holding that the shares of stock of the Botany Worsted Mills described in the contract of February 20, 1917, were not put beyond the reach of capture by the execution of such contract.

VII.

The Court erred in holding that the contract of February 20, 1917, did not constitute an executed sale but a mere option to purchase the 14,900 shares of stock of the Botany Worsted Mills which were the subject-matter of said contract.

VIII.

The Court erred in holding that the contract of February 20, 1917, did not convey to Stoeck & Sons, Inc. the title to the 14,900 shares of stock of the Botany Worsted Mills therein described.

IX.

The Court erred in not holding that by the terms of the agreement of February 20, 1917, Stoeck & Sons, Inc. acquired at least the equitable title to the 14,900 shares of the capital stock of the Botany Worsted Mills which are the subject-matter of that instrument.

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X.

The Court erred in not holding that the transfer of the title to the 14,900 shares of the capital stock of the Botany Worsted Mills to Stoeck & Sons, Inc. was accomplished on February 20, 1917, and that subsequent events did not invalidate such transfer.

XI.

The Court erred in not holding that the equitable title to the 14,900 shares of the Botany Worsted Mills having passed to Stoeck & Sons, Inc. on February 20, 1917, the fact that the consideration was to be paid later and that the shares of stock pledged as collateral security were to be redelivered from time to time as the instalments of the purchase price were paid, did not affect the title or render the contract executory or subject to dissolution upon the declaration of war.

XII.

The Court erred in not holding that Stoeck & Sons, Inc., the owners of the 14,900 shares of stock of the Botany Worsted Mills, an American corporation, was not an enemy or ally of an enemy within the meaning of the "Trading with the Enemy Act," and that they were not therefore subject to capture or seizure under its terms, and that the act of the Alien Property Custodian in condemning them as enemy-owned property upon his determination that they were such was without jurisdiction and void.

XIII.

The Court erred in not holding that the proposed sale by the Alien Property Custodian of the 14,900 shares of stock of the Botany Worsted Mills would constitute a violation of the true intent and meaning of the "Trading with the Enemy Act."

XIV.

The Court erred in dismissing the bill of complaint for want of equity and in entering the final decree to that effect against the complainant.

XIV.

The Decree of the District Court in favor of the defendants is contrary to the law and the evidence in the case.

Wherefore, appellant prays that the Decree of the United States District Court for the Southern District of New York aforesaid may be reversed with directions to enter a Decree herein as prayed for in the bill of complaint herein.

VALENTINE TAYLOR,
Attorney for Appellant.

LOUIS MARSHALL,
LOUIS J. VORHAUS,
Of Counsel.

557 [Endorsed:] United States District Court, Southern District of New York. Max W. Stocher, suing in his own behalf as a stockholder, etc., complainant, vs. James N. Wallace and ano., defendants. Assignment of errors. Valentine Taylor, Atty. for complainant, No. 52 Wall Street, New York City. U. S. District Court, S. D. of N. Y. Filed May 14, 1920.

558 Know all men by these presents, That we Max W. Stocher, as principal, and National Surety Company a New York Corporation, of No. 115 Broadway, New York, New York, as surety, are held and firmly bound unto James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, Francis P. Garvan, individually and as Alien Property Custodian, Stocher & Sons, Inc., Botany Worsted Mills and Paul Kieffer, in the full and just sum of One Thousand (\$1,000.00) Dollars, to be paid to the said James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, Francis P. Garvan, individually and as Alien Property Custodian, Stocher & Sons, Inc., Botany Worsted Mills and Paul Kieffer, their executors, administrators or assigns; to which payment, well and

truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 13th day of May, in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately, to wit, on the 13th day of May, 1920, at the District Court of the United States for the Southern District of New York, in a suit pending in said Court between Max W. Stoechr, suing in his own behalf as a stockholder in Stoechr & Sons, Inc., and in behalf of all others similarly situated, complainant, and James N. Wallace, Thomas Prehn, Ferdinand Kuhn, Andrew B. Duvall,

Walter S. Jones, Thomas F. Martin, Thomas J. Maloney
559 Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, Francis P. Garvan, individually and as Alien Property Custodian, Stoechr & Sons, Inc., Botany Worsted Mills and Paul Kieffer, defendants, a Decree was rendered against the said complainant dismissing his bill and supplemental bill for want of equity on the merits with costs, and the said Max W. Stoechr having obtained an appeal to the Supreme Court of the United States to reverse the Decree in the aforesaid suit.

Now, the condition of the above obligation is such, That if the said Max W. Stoechr shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

MAX W. STOCHR, [L. S.]
NATIONAL SURETY COMPANY, [L. S.]
By H. E. EMMETT,
Resident Vice-President.

Dated, New York, May 13th, 1920.

Attest:

E. M. MCCARTHY,
Resident Assistant Secretary.

Approved by:

LEARNED HAND,
Judge.

STATE OF NEW YORK,
County of New York, ss:

On this 13th day of May, 1920, before me personally appeared Max W. Stoechr, to me known and known to me to be the individual described in and who executed the within bond, and he acknowledged to me that — executed the same.

F. F. FIELDS,
Notary Public, etc.

560

National Surety Company.

Capital, \$4,000,000.00.

Affidavit, Acknowledgment, and Justification by Guaranty or Surety Company.

STATE OF NEW YORK,

County of New York, ss:

On this 13th day of May, one thousand nine hundred and twenty, before me personally came H. E. Emmett, known to me to be the Resident Vice-President of the National Surety Company, the corporation described in and which executed the within and foregoing bond of Max W. Stoehr, as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company, is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of Max W. Stoehr is the corporate seal of said National Surety Company, and was thereto affixed by the order and authority of the Board of Directors of said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with E. M. McCarthy and knows him to be the resident Assistant Secretary of said Company; that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M. McCarthy and was thereto subscribed by order and authority of said Board of Directors; and in the presence of said deponent; that the assets of said Company, un-
560½ encumbered and liable to execution, exceed its debts and liabilities of every nature whatsoever, by more than the sum of Eight Million (\$8,000,000) Dollars.

That ——— is the agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

H. E. EMMETT.

(Deponent's signature.)

Sworn to, acknowledged before me, and and subscribed in my presence this 13th day of May, 1920.

F. E. FIELDS.

(Officer's signature, description, and seal.)

[Endorsed:] Filed May 14, 1920. U. S. District Court, S. D. of N. Y.

561 United States District Court, Southern District of New York.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., and in Behalf of All Others Similarly
Situating, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW
B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J.
Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney,
Richard Stockton, Francis P. Garvan, Individually and as Alien
Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills,
and Paul Kieffer, Defendants.

On reading the Petition of Max W. Stoehr, the complainant
herein, for appeal, and upon consideration of the assignment of
errors presented therein, it is

Ordered, that an appeal be and the same is hereby allowed to the
said complainant from the final decree of this Court, entered on the
13 day of May, 1920, dismissing upon the merits the original and
supplemental bills of complaint herein, to the Supreme Court of
the United States, as prayed for in his Petition, on the condition
that the said complainant do file an appeal bond in the sum of
One Thousand (\$1,000.00) Dollars.

And an appeal bond in due form in the sum of One Thousand
(\$1,000.00) Dollars, with Max W. Stoehr as Principal, and National
Surety Company as Surety, having been presented to the
562 Court, the same is hereby approved.

And for good cause shown, it is

Ordered that the time within which appellant is to file the record
in the Supreme Court of the United States be, and the same is
hereby extended ninety (90) days from this date.

Dated, New York, May 13, 1920.

LEARNED HAND,

*Judge U. S. District Court for the
Southern District of New York.*

563 [Endorsed:] United States District Court, Southern Dis-
trict of New York. Max W. Stoehr, suing in his own behalf
as a stockholder, etc., Complainant, against James N. Wallace & ano.,
Defendants. Copy. Order. Valentine Taylor, Attorney for Com-
plainant, No. 52 Wall Street, New York City. U. S. District Court,
S. D. of N. Y. Filed May 14, 1920.

564 District Court of the United States for the Southern District of New York.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE et al., Defendants.

On motion of the Solicitor for the Complainant and appellant, and for good cause shown, it is

Ordered, That the time within which the statement of the evidence may be filed and settled by the trial judge in the above entitled cause be and is hereby extended to September 14, 1920.

It is further ordered, that the time within which the record on appeal in the above entitled cause is to be filed in the Supreme Court of the United States, be and is hereby extended to September 17, 1920. Enter,

(Signed)

July 13, 1920.

LEARNED HAND,

*U. S. District Judge,
Southern District of New York.*

U. S. District Court, S. D. of N. Y. Filed July 14, 1920.

565 In the District Court of the United States for the Southern District of New York.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, New York, September 14, 1920.

LOUIS J. VORHAUS AND
ELIJAH N. ZOLINE,

Counsel for Complainant.

FRANCIS G. CAFFEY,

*Solicitor for Defendant Francis P. Garvan,
as Alien Property Custodian, and A.
Mitchell Palmer.*

JOHN QUINN,

Solicitor for All Other Defendants.

566 In the District Court of the United States for the Southern District of New York.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

Amended Pra-cipe for Record.

The Clerk of this Court is hereby requested and directed to prepare and certify a transcript of record in the above entitled cause for the use of the Supreme Court of the United States on the appeal heretofore allowed in this case to the plaintiff, Max W. Stoehr, by including therein the following:

Bill of Complaint, Action Number 2.

Subpœna ad respondendum.

Supplemental Bill of Complaint, Action Number 2.

Order substituting Francis P. Garvan, as Alien Property Custodian, as of the defendants, for A. Mitchell Palmer, as Alien Property Custodian.

Answer of A. Mitchell Palmer.

Answer of Francis P. Garvan as Alien Property Custodian.

Answer of Botany Worsted Mills.

Answer of directors of Botany Worsted Mills.

Answer of Stoehr & Sons, Inc.

567 Answer of directors of Stoehr & Sons, Inc.

Transcript of testimony reduced to narrative form together with the exhibits as the same will be approved by the court.

Opinion of Judge Hand filed April 21, 1920.

Final decree signed by Judge Hand filed May 13, 1920.

Petition for appeal filed May 13, 1920.

Citation on appeal filed May 13, 1920.

Assignment of errors filed May 13, 1920.

Bond on appeal filed May 13, 1920.

Order allowing appeal to the Supreme Court and extending the time of the appellant to file the record in the Supreme Court of the United States ninety days from the date of said order, May 13, 1920.

Order extending the time within which the record on appeal in this

cause may be filed in the Supreme Court of the United States to September 17, 1920, said order being dated July 13, 1920.

Dated, September 1, 1920.

VALENTINE TAYLOR,
Solicitor for Plaintiff.

LOUIS J. MARSHALL,
LOUIS J. VORHAUS,
ELIJAH N. ZOLINE,
Counsel.

568 In the District Court of the United States for the Southern District of New York.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in Stoehr & Sons, Inc., and in Behalf of All Others Similarly Situated, Complainant,

against

JAMES N. WALLACE, THOMAS PREHN, FERDINAND KUHN, ANDREW B. Duvall, Walter S. Jones, Thomas F. Martin, Thomas J. Maloney, Herbert P. Howell, W. J. Hellmer, H. C. MacEldowney, Richard Stockton, A. Mitchell Palmer, Individually and as Alien Property Custodian; Stoehr & Sons, Inc., Botany Worsted Mills, Francis P. Garvan, and Paul Kieffer, Defendants.

It is hereby stipulated and agreed by and between the parties hereto that the amended pra-cipe for record hereto annexed be and the same hereby is substituted for the pra-cipe for record filed herein by the solicitor for the appellant on August 23, 1920, with the same force and effect as if the pra-cipe for record had been in the form of the amended pra-cipe for record hereto annexed and had been filed on August 23, 1920.

Dated, New York, September 1, 1920.

VALENTINE TAYLOR,
Solicitor for Complainant.

FRANCIS G. CAFFEY,
*Solicitor for Defendant A. Mitchell Palmer
and for Defendant Francis P. Garvan,
as Alien Property Custodian.*

JOHN QUINN,
Solicitor for other Defendants.

569 UNITED STATES OF AMERICA,
Southern District of New York, ss:

E. 15-327.

MAX W. STOEHR, Suing in His Own Behalf as a Stockholder in
Stoehr & Sons, Inc., etc., Complainant,

VS.

JAMES N. WALLACE et al., Defendants.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this fifteenth day of September in the year of our Lord one thousand nine hundred and twenty and of the Independence of the said United States the one hundred and forty-fifth.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

Endorsed on cover: File No. 27,903. S. New York D. C. U. S. Term No. 546. Max W. Stoehr, suing in his own behalf as a stockholder in Stoehr & Sons, Inc., and in behalf of all others similarly situated, appellant, vs. James N. Wallace et al. Filed September 16th, 1920. File No. 27,903.

(2523)

BY

J. H. HARRIS

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JAMES D. MAHER,
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1920.

No. 546.

MAX W. STOEHR, suing in his own behalf as a
stockholder of Stoehr & Sons, Inc., and in be-
half of all others similarly situated,

Appellant,

against

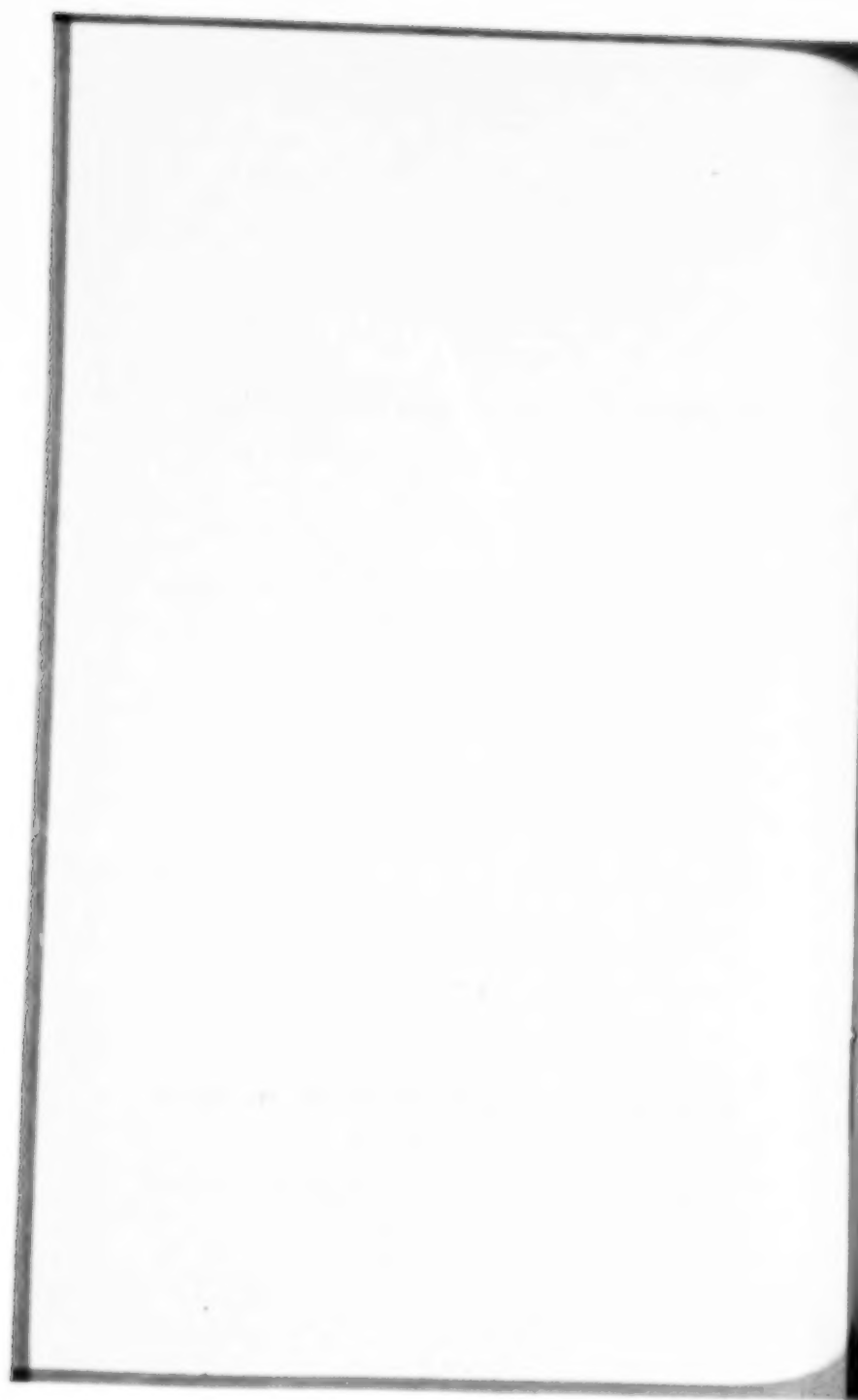
JAMES N. WALLACE, et al.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW
YORK.

APPELLANT'S ANSWER TO MOTION
TO ADVANCE.

LOUIS MARSHALL,
LOUIS J. VORHAUS,
Of counsel.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1920.

MAX W. STOEHR, suing in his
own behalf as a stockholder of
Stoehr & Sons, Inc., and in be-
half of all others similarly
situated,

Appellant,

against

JAMES N. WALLACE, et al.,

Appellees.

No. 546.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW
YORK.

**APPELLANT'S ANSWER TO MOTION
TO ADVANCE.**

The appellant recognizes the importance of this
cause and consents that it may be advanced, so
that the appeal herein may be argued during the

present term of court. He objects, however, to the hearing of the case during December, 1920, as requested by the Solicitor General, and suggests that such hearing be fixed for a day not later than the first Monday of February next.

The constitutional question involved is not the seizure and sale of property of alien enemies is unconstitutional. The 14,900 shares of the capital stock of the Botany Worsted Mills, the subject-matter of this suit, seized by the Alien Property Custodian, the sale of which was sought to be enjoined, were not owned by an alien enemy, but by Stoehr & Sons, Incorporated, a corporation organized under the laws of the State of New York, in whose right the plaintiff, who is a citizen of the United States, brought this action in his representative capacity as a stockholder. Appellant contends that such seizure without a hearing being first accorded to the owner, was a denial of due process of law. He also claims that the attempted sale by the Alien Property Custodian of these shares of stock, which could only have been accomplished at a great sacrifice and would have deprived the owner of the title and a substantial part of the value of his property, was likewise violative of the constitutional rights of the appellant and of the corporation which he represents. It is especially significant that such sale was to be made before Congress had determined the disposition to be made of property seized under the Trading with the Enemy Act, as provided in Section 12 of that statute.

The appeal in this case having been taken directly from the District Court, it became necessary to prepare the record for transmission to this

Court, which, on account of its length, occupied considerable time. The record has not as yet been printed and several weeks will elapse before such printing is completed. Appellant's counsel do not know when copies of the printed record will be in their possession, and without such record, the preparation of the brief will be difficult. For this reason and because of professional engagements which will occupy all of their time until the latter part of December, it will be physically impossible for them to complete satisfactorily the preparation of their argument upon the many important points involved until after January first next.

Respectfully submitted,

LOUIS MARSHALL,
LOUIS J. VORHAUS,
Appellant's Counsel.